

1997

State Farm Mutual Automobile Insurance Company v. Chad Christensen and Katherine Egelston: Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *State Farm Mutual Automobile Insurance v. Christensen*, No. 970566 (Utah Court of Appeals, 1997).
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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS .A10
DOCKET NO. 970566-CA

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff/Appellee,

vs.

CHAD CHRISTENSEN and
KATHERINE EGELSTON,

Defendant/Appellant.

KATHERINE EGELSTON,

Cross-Claimant,

vs.

CHAD CHRISTENSEN,

Defendants.

KATHERINE EGELSTON,

Third-Party Plaintiff,

vs.

FRITZ MUDROW,

Third-Party Defendant.

Appellate No. 970566-CA

Priority No. 15

BRIEF OF APPELLEE

FIL

DEC - 2 1997

COURT OF APPEALS

**APPEAL FROM SUMMARY JUDGMENT IN FAVOR OF
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
IN THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE GLENN K. IWASAKI PRESIDING**

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STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff/Appellee,

VS.)
)

CHAD CHRISTENSEN and
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Defendant/Appellant. _____)

KATHERINE EGELSTON,

Cross-Claimant,)
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VS.)
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Defendants. _____)
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KATHERINE EGELSTON,

Third-Party Plaintiff.)
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FRITZ MUDROW)

Third Party Defendant

BRIEF OF APPELLEE

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I
PARTIES TO THIS PROCEEDING

The parties to this proceeding are State Farm Mutual Automobile Insurance Company (Plaintiff below and Appellee here) and Katherine Christensen (Defendant below and Appellant here).

Chad Christensen, and Fritz Mudrow have not appealed the judgment in favor of State Farm Mutual Automobile Insurance Company and are not parties to this appeal.¹

1

Egelston claims that Chad Christensen is a “nominal party to this appeal.” (Appellant’s Brief, pg. ii). Chad Christensen has taken no steps to appeal the judgment entered in favor of State Farm Mutual Automobile Insurance Company and is not a party to this appeal. Judgment has been entered against defendants. (R. 209).

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IV JURISDICTION

This appeal is from Summary Judgment entered in a Declaratory Judgment action in favor of Plaintiff, State Farm Mutual Automobile Insurance Company and against Defendant Katherine Egelston. Judgment was entered by the Third Judicial District Court, Salt Lake County, the Honorable Glenn Iwasaki presiding, April 23, 1997. [R. 208].

Judgment in favor of Plaintiff and against Defendants, on the issue of insurance coverage, was certified for immediate appeal pursuant to Rule 54(b), Utah Rules of Civil Procedure. [R. 209].

V
STATEMENT OF THE ISSUES

State Farm Mutual Automobile Insurance Company contends that the only issue on appeal is:

Does Utah law allow an insurer who issues an automobile “owner’s policy” (which provides liability coverage for the ownership, maintenance and use of a described vehicle and also provides certain additional coverage for the use of other certain non-owned “cars”) to exclude liability coverage, for an insured’s operation of a non-owned, uninsured motorcycle?

(R. 93 - 137; 151 - 159).

Katherine Egelston has sought to raise other issues on appeal, many for the first time on appeal. State Farm Mutual Automobile Insurance Company objects to Egelston’s proposed designation of issues and affirmatively alleges that the issue of “ambiguity” was not presented to the trial court for consideration, was not briefed for the trial court, was not addressed by the parties before the trial court, and was not appropriately preserved for appeal, as more fully discussed under the “Argument” Section of this brief.

VI
CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES, RULES AND REGULATIONS

31A-22-303. Motor vehicle liability coverage.

(1) In addition to complying with the requirements of Chapter 21 and Part II of Chapter 22, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

- (a) name the motor vehicle owner or operator in whose name the policy was purchased, state that named insured's address, the coverage afforded, the premium charged, the policy period, and the limits of liability;
- (b) (i) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(c) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or
- (ii) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insured's use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owner's policy under Subsection (1)(b)(i); and
- (c) except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured.

(2) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may:

- (a) provide for the prorating of the insurance under that policy with other valid and collectible insurance;

- (b) grant any lawful coverage in addition to the required motor vehicle liability coverage;
- (c) if the policy is issued to a person other than a motor vehicle business, limit the coverage afforded to a motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent; and
- (d) if issued to a motor vehicle business, restrict coverage afforded to anyone other than the motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent.

VII
STATEMENT OF THE CASE
Nature of the Case

This lawsuit arises from a motorcycle accident which occurred on July 20, 1994. Chad Christensen was operating an uninsured motorcycle owned by Fritz Mudrow. Katherine Egelston, a passenger on the motorcycle being operated by Chad Christensen, claims to have sustained personal injury in the accident.

State Farm Mutual Automobile Insurance Company (hereinafter "State Farm") had issued an automobile insurance policy (hereinafter "Your State Farm Car Policy") to Chad's parents, Tim and Lynda Christensen, which extended certain coverage as set forth in the policy. Chad Christensen (hereinafter "Christensen"), a resident relative of the household of Tim and Lynda Christensen, was an insured under the Liability Coverage of Your State Farm Car Policy.

The claims of Egelston against Christensen were presented to State Farm to adjust, settle, and otherwise resolve or defend.

Course of Proceedings

State Farm filed a declaratory action seeking to have the trial Court declare that Your State Farm Car Policy did not extend liability coverage for this accident. Christensen, an insured under the policy, was named as a party defendant. Egelston, the allegedly injured passenger, was also named as a party to the declaratory action.²

²

See, for example, Republic Insurance Group v. Doman, 774 P.2d 1130 (Utah 1989), wherein Justice Zimmerman, in a concurring opinion, opined that, in order to get "the real benefit" from a declaratory judgment, injured claimants should be joined as parties, not kept out.

Egelston filed a cross-claim against Christensen alleging that her injuries were caused by the negligence of Christensen. She also filed a third-party complaint against Fritz Mudrow (hereinafter "Mudrow"), alleging negligent entrustment and purporting to assert an "uninsured motorist claim" against Farmers Insurance Exchange Company.³

Cross-Motions for Summary Judgment were filed by State Farm and Egelston. (R. 91; 141). Mudrow and Christensen did not file Motions for Summary Judgment nor did they oppose the Motion for Summary Judgment filed by State Farm.

At the trial court level, State Farm argued in support of its Motion for Summary Judgment:

1. The State Farm policy is an owner's policy, providing coverage for the ownership, maintenance or use of the insured vehicle;
2. The State Farm policy provides additional coverage for the use of certain defined other cars, but does not extend coverage to non-owned motorcycles;
3. The policy satisfies Utah law as an owner's policy and is not required to insure liability arising from the use of "non-owned vehicles."

(R. 93 - 137).

In her brief in support of her Motion for Summary Judgment and in Opposition to the Motion for Summary Judgment filed by State Farm, Egelston argued:

1. A resident relative has the same coverage as a named insured;
2. As to Defendant Chad Christensen, State Farm's policy is an operator's policy pursuant to Utah Code Annotated §31A-22-303; and

3

Farmers Insurance Exchange filed a Motion to Dismiss, with supporting Memorandum of Points and Authorities. Upon Stipulation, Farmers Insurance Exchange was Dismissed, without prejudice and did not participate further in the proceedings.

3. Utah law requires automobile insurance policies to provide coverage for liability arising out of the use of a motor vehicle.

(R. 141 - 50).

In reply to Egelston's Motion for Summary Judgment, State Farm also argued:

1. As Utah law requires, the State Farm policy insures resident relatives to the same extent as the named insured;
2. The State Farm policy meets the requirements of Utah law as an "owner's policy." It is not an "operator's policy" and the statute does not require it to be such.
3. Liability policies are not required under Utah law to cover the use of any and all motor vehicles.

(R. 151 - 63).

A hearing was held on the cross-motions for summary judgment on March 5, 1997, before the Honorable Glenn Iwasaki, District Court Judge. (R. 164; Transcript 221 - 37).

Disposition Below

At the conclusion of the hearing, the court entered its Order, granting Summary Judgment in favor of State Farm; holding that Your State Farm Car Policy is an "owner's policy," that Your State Farm Car Policy did not extend liability insurance protection coverage to the accident which is the subject of Egelston's claims against Christensen, and that State Farm owed no duty to indemnify nor defend Christensen from the claims asserted by Egelston. The Court entered its written Order on April 23, 1997. (R. 208-10).

Relevant Facts

1. State Farm issued Your State Farm Car Policy to Tim and Lynda Christensen, (R. 107 - 37);
2. The declaration sheet of Your State Farm Car Policy declares that Tim and Lynda Christensen are the “named insureds;” that their address is 474 East Howard Drive, Sandy, Utah, 84070-3418; sets forth the policy number of S19 6228 D29 44A; sets forth the coverages afforded by the policy; sets forth the premiums charged for the coverages; sets forth the policy period (March 1, 1994 to October 29, 1994); and sets forth the limits of coverage afforded. (R. 108);
3. In addition, Your State Farm Car Policy designates all motor vehicles on which coverage is granted (the 1984 Ford Ranger pickup); insures the persons named in the policy; insures any other person using the 1984 Ford Ranger pickup with the express or implied permission of the named insureds; and insures persons related to the named insureds who are residents of the household to the same extent as the named insureds. (R. 108 - 37);
2. On July 20, 1994, Chad Christensen, the son of Tim and Lynda Christensen who resided with them, was involved in a motorcycle accident while operating a borrowed 1983 Honda Nighthawk motorcycle, which was uninsured. (R. 2, 96, 146);
3. At the time of the accident, Egelston was a passenger on the motorcycle being operated by Christensen. (R. 96,146);
4. The motorcycle was owned by Mudrow. (R. 96, 146);

5. Egelston was allegedly injured in the accident and has made claim against Christensen for the injuries she sustained. (R. 96, 146);
6. Christensen submitted the claims asserted by Egelston to State Farm for adjustment, payment, defense or other resolution under Your State Farm Car Policy. (R. 96, 146);
7. State Farm instituted this declaratory action, asking the Court to declare that no insurance coverage exists under the policy for any liability that could be adjudged against Christensen; that State Farm has no duty to defend nor indemnify Christensen under the policy; and that State Farm has no coverage obligations under the policy for the motorcycle accident. (R. 1- 27)

VIII SUMMARY OF ARGUMENTS

1. The issue of “ambiguity” was not raised in the trial Court and cannot be raised for the first time on appeal. Neither in her brief in support of her Motion for Summary Judgment and in Opposition to the Motion for Summary Judgment filed by State Farm (R. 144-49) , nor at the oral argument before Judge Iwasaki (R. 221 - 370), did Egelston claim that Your State Farm Car Policy was “ambiguous.” Rather, counsel for Egelston at the oral argument acknowledged, “Yes, I agree that the policy excludes coverage for motorcycles in its language and the issue is, does the law allow that when it comes to an operator?” (T. Pg 13, R. 233).

Issues not raised nor preserved at the trial court cannot be raised for the first time on appeal.

2. Egelston has no standing to claim “ambiguity” in Your State Farm Car Policy. A stranger to a contract has no standing to claim that a contract is ambiguous when the actual parties to the contract do not claim “ambiguity.” Egleston was not a party to the contract between State Farm and its insured, Christensen. Christensen has not claimed that the policy was ambiguous, has not he claimed that he “thought” he had the coverage Egelston claims “should be” extended under the policy because of perceived “ambiguity,” and Christensen has allowed judgment to be taken against him on those issues.

3. Your State Farm Car Policy is not ambiguous. Your State Farm Car Policy, on its face, is clear, plain and unambiguous. The policy limits liability coverage to the use of “your car” (which is described on the declarations page of the policy as the 1984 Ford

Ranger pickup) and to ***certain*** (but limited) other cars, as defined in the policy.

- a. Liability coverage under Your State Farm Car Policy is extended only to the use of the described car (the 1984 Ford Ranger pickup) and to the use of a “newly acquired car,” a “temporary substitute car,” and a “non-owned car.” The non-owned, uninsured motorcycle involved in this accident was not a “newly acquired car,” was not a “temporary substitute car,” nor was it a “non-owned car” as defined in the policy.
- b. A “non-owned car” is defined in Your State Farm Car Policy as “a car” (a land motor vehicle with four or more wheels, which is designed for use mainly on public roads) which is not owned by an “insured.” A “car” is not a “motorcycle.” This definition, on its face, is plain, clear and unambiguous.
- c. Egelston’s counsel acknowledged that Your State Farm Car Policy clearly excludes liability coverage for the operation of a non-owned motorcycle. At the hearing on the cross-motions for Summary Judgment, counsel acknowledged that “Yes, I agree that the policy excludes coverage for motorcycles in its language and the issue is, does the law allow that when it comes to an operator?” (R. 232-33).
- d. The Utah Court of Appeals has also recognized that “a motorcycle” is not “a car.” In construing the distinction between “an automobile” and “a motorcycle” the Utah Court of Appeals has stated that “Although either (term “automobile” or “motorcycle”) may be considered a ‘motor vehicle,’ under a common understanding of the terms a ‘motorcycle’ is not an ‘automobile.’” See: Bear River Mutual Ins. Co. V. Wright, 880 P.2d 1019 (Utah Ct. App.

1989).

4. Your State Farm Car Policy is an “owner’s” policy and is not an “operator’s” policy. Utah law requires every resident owner of a motor vehicle to maintain owner’s **or** operator’s security in effect at any time that the motor vehicle is operated on a highway within the state of Utah. Utah Code Annotated §41-12a-301. Emphasis added.

There is a distinction between an “owner’s policy” and an “operator’s policy.” An “owner’s policy,” under Utah law, must designate by appropriate reference the motor vehicles on which coverage is granted, insure the persons named in the policy, and insure any other person using the named motor vehicle with the express or implied permission of the named insured. See, Utah Code Annotated §31A-22-303(1)(b)(i). Your State Farm Car Policy, on its face, is an “owner’s policy” and complied with the requirements of Utah law providing for “owner’s policies.”

Your State Farm Car Policy does not purport to be, nor is it, an “operator’s policy.” However, Your State Farm Car Policy does extend additional coverage (beyond the minimum requirements of Utah law, as allowed by Utah law). See, Utah Code Annotated §31A-22-303(2)(b). However, that extension of additional coverage does not transform the “owner’s policy” into an “operator’s policy.”

5. Your State Farm Car Policy does not extend liability coverage to the insured’s use of a non-owned, uninsured motorcycle. Your State Farm Car Policy appropriately limits liability coverage for the insureds use of “non-owned, uninsured vehicles.” No liability coverage is extended to the insureds use of a non-owned, uninsured motorcycle.

The insured's use of the non-owned, uninsured motorcycle at the time of this accident was not covered for liability by Your State Farm Car Policy.

IX ARGUMENT

1. The issue of “ambiguity” was not raised in the trial Court and cannot be raised for the first time on appeal.

Rule 24(5)(A), Utah Rules of Appellate Procedure, requires a party to set forth the statement of the issues presented for review before the appellate court, with “citation to the record showing that the issue was preserved in the trial court.”

In the “Statement of the Issues Presented for Review and Standard of Review,” Egelston seeks to have this Court determine “whether or not the court below erred in concluding that the policy in question unambiguously excluded coverage for an insured’s use of a non-owned motorcycle. (R. 147 - 48) “ Egelston, in her brief, relies upon the “ambiguity” contention to support her present contention that:

- A. Summary Judgment for an Insurer is Error Where the Policy is **Ambiguous**, (Brief, p. 9);
- B. The Policy Was **Ambiguous** from the Perspective of a Reasonable Insured, (Brief, p. 10);
 - 1. The Policy is **Ambiguous** as to if, and when, a Motorcycle Is or Is Not a Car, (Brief, p. 11); and
 - 2. The Policy is **Ambiguous** as to Whether it is an Owner’s Policy, an Operator’s policy, or Both, (Brief, p. 13).

Emphasis added.

However, the record shows clearly that the issue of “ambiguity” was not raised, briefed, addressed nor timely preserved for this appeal.

A review of pages 147-48 of “The Record” (cited by Egelston to support her contention that the issue of “ambiguity” was preserved) shows that the pages referred to constitute only that portion of Egelston’s trial court Memorandum of Points and Authorities

in Support of her Motion for Summary Judgment and in Opposition to the Motion for Summary Judgment filed by State Farm (hereinafter “Egelston’s trial court memorandum) dealing with Egelston’s contention that Your State Farm Car Policy is an “operator’s policy” rather than an “owner’s policy.” It does not deal with “ambiguity.”

In the Motion for Summary Judgment filed by Egelston, Egelston claimed that the motion “is predicated on the fact that State Farm’s insurance covers non-owned vehicles which includes motorcycles.” (R. 142). In the “Introduction” section of the Egelston’s trial court memorandum, Egelston expanded the basis for the Motion for Summary Judgment and claimed that the issues of coverage “involved basically two issues: 1) Was defendant Chad Christensen a resident relative of his parent’s home?⁴ and 2) Is a motorcycle covered as a non-owned “motor vehicle” pursuant to Utah law? (R. 145). The issue of “ambiguity” was not raised, briefed, addressed or preserved at the trial court level.

At the hearing held on the Cross-Motions for Summary Judgment, counsel for Egelston acknowledged the clarity of the language of the State Farm Mutual Automobile Insurance Company policy:

Yes, I agree that the policy excludes coverage for motorcycles in its language and the issue is, does the law allow that when it comes to an operator?

(R. 232-33).

4

State Farm Mutual Automobile Insurance Company acknowledged in its Memorandum in Opposition to Defendant Egelston’s Motion for Summary Judgment and in Reply to Defendant Egelston’s Opposition to State Farm’s Motion for Summary Judgment (hereinafter “State Farm’s trial court memorandum) that it did not dispute that Chad Christensen was related to the “named insureds,” was a resident of the Insureds’ household and was, therefore, insured to the same extent as the named insured. (R. 151-52).

Again, the only issue raised, briefed, addressed and arguably preserved was limited to “does Utah law allow State Farm to exclude liability coverage from an insured’s operation of a non-owned, uninsured motorcycle? (R. 233). The issue of “ambiguity” was not raised, addressed nor preserved at oral argument on the Cross-Motions for Summary Judgment.

Issues not raised in the pleadings nor put in issue at the trial may not be raised for the first time on appeal. James v. Preston, 746 P.2d 799, 801 (Utah App. 1987); State v. Lopez, 886 P.2d 1105, 1113 (Utah 1994) and Monson v. Carver, 928 P.2d 1017 (Utah 1996). The belated attempt by Egelston to raise the issue of “ambiguity” is improper and this Court should not consider those issues in this appeal.

2. Egelston has no standing to claim “ambiguity” in Your State Farm Car Policy.

Insurance policies are contracts and are interpreted under the same rules governing ordinary contracts. Village Inn Apartments v. State Farm Fire & Casualty Co., 790 P.2d 581, 582 (Utah App. 1990) (citing Bergera v. Ideal Nat’l Life Ins. Co., 524 P.2d 599, 600 (Utah 1974)). It is a basic rule of contract construction that the intent of the parties is to be determined from the writing itself, with each provision being considered in relation to all others. Willard Pease Oil & Gas Co. v. Pioneer Oil & Gas Co., 899 P.2d 766 (Utah 1995); Utah Valley Bank v. Tanner, 636 P.2d 1060 (Utah 1981). The interpretation of a contract is a matter of law for the court to determine unless the contract is ambiguous and evidence of the parties’ intent (which is a matter of fact) is necessary to establish the terms of the contract. Records v. Briggs, 887 P.2d 864, 871 (Utah Ct. App. 1994) and R&R Energies vs. Mother Earth Industries, Inc., 936 P.2d 1068 (Utah 1997). An ambiguity may be

established only if there is a factual issue as to what the parties intended. Faulkner v. Farnsworth, 665 P.2d 1292 (Utah 1983) and Grow v. Marwick Dev., Inc., 621 P.2d 1249 (Utah 1990). A contract is not ambiguous just because one party gives a provision a different meaning than another party does. R&R Energies, *supra*.

Here, there has been no allegation that there was any factual dispute as to what the parties to the contract intended. Neither the insurer nor the insured have raised issue as to the terms of the insurance contract. Christensen has not claimed “ambiguity” nor has he claimed that he had a different “expectation” of the policy protection than what he received.⁵ He has allowed judgment to be taken against him, without opposition and without appeal.

Egelston, on the other hand, was not a party to the contract and had no privity of contract with the parties to this insurance contract. Nevertheless, she claims that the insurance contract between State Farm and its insured, Christensen, “is ambiguous from the perspective of a reasonable insured.” (Brief p. 10 - 11). She has no standing to make such an argument since she was not a party to the contract and cannot know what the intent of the parties was.

In this case, Egelston may have standing to participate in the declaratory action because of her claim for injuries which she contends were caused by the negligence of Christensen. Republic Insurance Group v. Doman, 774 P.2d 1130 (Utah 1989). However,

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In any event, the “reasonable expectation” doctrine has not been adopted in Utah. See, for example, Allen v. Prudential Property & Cas. Ins. Co., 839 P.2d 798 (1992), where the Utah Supreme Court refused to adopt the “reasonable expectation doctrine” set forth by the Court of Appeals in Wagner v. Farmers Insurance Exchange, 786 P.2d 763 (Utah Ct.App. 1990).

she has no standing to contend that the language of the policy was ambiguous to the “reasonable insured” when she is not that insured. She has no standing to assert that the policy is ambiguous to the actual insured when the actual insured, Christensen, allowed judgment to be taken against him establishing that Your State Farm Car Policy is an “owner’s policy,” not an “operator’s policy” and establishing that the policy did not impose on State Farm an obligation to indemnify nor defend Christensen.

The objective to be reached in construing contracts is to give the contract the effect intended by the parties to the contract. Turner v. Hi-Country Homeowners Ass’n, 910 P.2d 1223 (Utah 1996) and Republic Group, Inc. v. Won-Door Corp., 883 P.2d 285 (Utah Ct.App. 1994). If possible, these intentions should be gleaned from an examination of the text of the contract itself. Buehner Block Co. v. UWC Assocs., 752 P.2d 892 (Utah 1988) and Atlas Corp. v. Clovis Nat’l Bank, 737 P.2d 225 (Utah 1987). Only if the intent of the parties cannot be determined from the four-corners of the contract, may extrinsic evidence then be considered. Plateau Mining Co. v. Utah Div. Of State Lands & Forestry, 802 P.2d 720 (Utah 1990); Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382 (Utah 1989); Union Bank v. Swenson, 707 P.2d 663 (Utah 1985).

Here, it is also significant to note that Egelston stipulated to the factual allegations of the Motion for Summary Judgment (R. 146) and agreed that the matter was ripe for summary judgment. Indeed, Egelston claimed that there were no genuine issues of material fact in dispute and that judgment is proper as a matter of law, pursuant to Rule 56, Utah Rules of Civil Procedure. (R. 142). Having lost judgment to State Farm at the trial court level, Egelston now claims factual issues exist because Your State Farm Car Policy is ambiguous. This claim was not only not raised in the trial court, but is inconsistent with

the position taken before the trial court that no factual issues exist which would preclude Summary Judgment.

3. Your State Farm Car Policy Is Not Ambiguous.

A contract provision is not necessarily ambiguous because the parties differ in their interpretation of its language. R&R Energies, supra. In order to interpret a contract, the appellate court will first look to the four corners of the documents (Your State Farm Car Policy) to determine the intent of the parties. Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382 (Utah 1989). Contract language is ambiguous only “if the words used to express the intent of the parties are insufficient so that the contract may be understood to reach two or more plausible meanings.” Larson v. Overland Thrift & Loan, 818 P.2d 1316 (Utah App. 1991), **cert. denied**, 832 P.2d 476 (Utah 1992). To demonstrate ambiguity, the contrary positions must each be a reasonable interpretation of the terms in the provision. Williard Pease Oil and Gas Co. v. Pioneer Oil and Gas Company, 899 P.2d 766 (Utah 1995).

Your State Farm Car Policy is plain, clear and unambiguous. The policy extends liability insurance coverage to two situations; the use of “your car” and the use of certain described (but limited) “other cars.”

Your Car

In regards to “your car” (the 1984 Ford Ranger pickup, which is defined as “the car or the vehicle described on the declarations page”) the policy states:

We will:

1. pay damages which an ***insured*** becomes legally liable to pay because of:

- d. **bodily injury** to others, and
- e. damage to or destruction of property including loss of use,

caused by accident resulting from the ownership, maintenance or use or **your car**; and

- 2. defend any suit against an **insured** for such damages with attorneys hired and paid by us. We will not defend any suit after we have paid the applicable limit of our liability for the accident which is the basis of the lawsuit.

Your State Farm Car Policy also defines "Who Is an Insured" for liability purposes:

Who Is an Insured

When we refer to **your car**, a **newly acquired car** or a **temporary substitute car**, **insured** means:

- 1. **you**;
- 2. **your spouse**;
- 3. the **relatives** of the first person named in the declarations;
- 4. any other **person** while using such a car if its use is within the scope of consent of **you or your spouse**; and
- 5. any other **person** or organization liable for the use of such a **car** by one of the above **insureds**.

When we refer to a **non-owned car**, **insured** means:

- 1. the first **person** named in the declarations;
- 2. his or her **spouse**;
- 3. their **relatives**; and
- 4. any **person** or organization which does not own or hire the **car** but is liable for its use by one of the above **persons**.

THERE IS NO COVERAGE FOR **NON-OWNED CARS**:

1. IF THE DECLARATIONS STATE THE "USE" OF **YOUR CAR** IS OTHER THAN "PLEASURE AND BUSINESS"; OR
2. WHILE:
 - a. BEING REPAIRED, SERVICED OR USED BY ANY **PERSON** WHILE THAT **PERSON** IS WORKING AN ANY **CAR BUSINESS**; OR
 - b. USED IN OTHER BUSINESS OR OCCUPATION. This does not apply to a **private passenger car** driven or **occupied** by the first **person** named in the declarations, his or her **spouse** or their **relatives**.

Under the terms of Your State Farm Car Policy, therefore, liability coverage is extended to "an insured" who becomes legally liable to pay damages because of bodily injury or property damage caused by accident an arising out of the ownership, maintenance or use of the 1984 Ford Ranger pickup.

Coverage for the Use of Other Cars

In addition to the coverage extended to "insureds" for the use of the 1984 Ford Ranger pickup, Your State Farm Car Policy extends liability coverage for the use of certain other cars. Your State Farm Car Policy states:

The liability coverage extends to the use, by an **insured**, of a **newly acquired car**, a **temporary substitute car**, or a **non-owned car**.

The policy defines the terms "newly acquired car," "temporary substitute car," and "non-owned car." In regards to the term "non-owned car," Your State Farm Car Policy states:

Car - means a land motor vehicle with four or more wheels, which is designed for use mainly on public roads. It does not include:

1. any vehicle while located for use as a dwelling or other premises; or
2. a truck-tractor designed to pull a trailer or semitrailer.

Non-Owned Car - means a **car** not owned by or registered or leased in the name of:

1. ***you, your spouse;***
2. Any ***relative*** unless at the time of the accident or ***loss***:
 - a. the ***car*** has been described on the declarations page of a liability policy some time within the preceding 30 days; and
 - b. ***You, your spouse*** or a ***relative*** who does not own or lease such ***car*** is the driver.
3. any other ***person*** residing in the same household as ***you, your spouse***, or any ***relative***; or
4. an employer of ***your, your spouse*** or any ***relative***.

The terms are plain, clear and unambiguous. A “car” or a “non-owned car” is a land motor vehicle with four or more wheels. A motorcycle has two wheels.

It is difficult to even “guess” what “ambiguity” Egelston sees in the policy provisions. Egelston does not identify how the definition is confusing. Unless the “vehicle” has four or more wheels, it is not a car and is not, therefore, a non-owned car. Unless it has four or more wheels, liability coverage does not extend.

Indeed, Egelston’s counsel, at oral argument, recognized that the policy clearly excluded liability coverage for motorcycles. In response to a question from Judge Iwasaki, counsel stated:

Yes, I agree that the policy excludes coverage for motorcycles in its language and the issue is, does the law allow that when it comes to an operator?

(R. 232-33).

The alleged confusion now claimed in Egelston's brief was not present at the time she filed her Motion for Summary Judgment, was not present when she filed her trial court memorandum and was not present when she presented her oral argument. Her present claim of "ambiguity" is disingenuous given the concessions made concerning the clarity of the policy at the hearing.

The Utah Court of Appeals also has recognized that "a motorcycle" is not "a car." In construing the distinction between "an automobile" and "a motorcycle" the Utah Court of Appeals has stated that "although either (term "automobile" or "motorcycle") may be considered a 'motor vehicle,' under a common understanding of the terms a 'motorcycle' is not an 'automobile.'" See: Bear River Mutual Ins. Co. V. Wright, 880 P.2d 1019 (Utah Ct. App. 1989).

As a matter of law, a "motorcycle" is not "a car" and no liability coverage extends to the insured's use of a non-owned, uninsured motorcycle.

4. Your State Farm Car Policy is an "owner's" policy and is not an "operator's" policy.

Egelston initially claims that the State Farm policy is ambiguous as to whether the policy is "an owner's policy, an operator's policy, or both." (Brief. 13). This contention is without merit.

Utah Law Requires Owner's or Operator's Security for Owners or Operators of Motor Vehicles

Utah Code Annotated §41-12a-301 requires every resident owner of a motor vehicle to maintain owner's **or** operator's security in effect at any time the motor vehicle is operated on a highway within the state. Emphasis added. The owner or operator of a

motor vehicle may satisfy the owner's or operator's security requirements of Utah Code Annotated §41-12a-301 by purchasing a policy (or policies) of insurance. Utah Code Annotated §31A-22-302. Policies purchased to satisfy owner's or operator's security requirements shall include (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304; uninsured motorist coverage under Section 31A-22-305, unless expressly waived under Subsection 31A-22-305(4); and (c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(8)(c). Policies (other than those extending coverage for motorcycles, trailers and semitrailers) must also include personal injury protection coverages under Sections 31A-22-206 through 31A-22-309. See, Utah Code Annotated §31A-22-302.

Utah Law Establishes a Distinction Between Owner's and Operator's Policy

Utah Code Annotated §31A-22-303 makes a distinction between the types of policies identified in Utah law; an "owner's policy" and an "operator's policy." Under either policy, the policy issued to satisfy the financial responsibility law must 1). name the motor vehicle owner or operator in whose name the policy was purchased, 2). state that named insured's address, 3). state the coverage afforded, 4). the premium charged, 5). the policy period, and 6). the limits of liability. In addition:

- (b)(i) if it is an owner's policy, designate by appropriate reference all the motor vehicle on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(c) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicle within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

- (ii) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insureds use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owners policy

The distinction, therefore, between an "owner's policy" and an "operator's policy" is recognized (indeed, established) by Utah law. If the policy issued is an "owner's policy," as Your State Farm Car Policy is, the policy must designate by appropriate reference the motor vehicles on which coverage is granted, insure the persons named in the policy, and insure any other person using the named motor vehicle with the express or implied permission of the named insured. See, Utah Code Annotated §31A-22-303(1)(b)(i).

**Your State Farm Car Policy meets the requirements of,
and is, an "owner's policy."**

On the face of the policy it describes itself as "Your State Farm **Car** Policy." Emphasis added. (R. 109). It does not describe itself as an "operator's policy".

The policy names the insureds (Tim and Lynda Christensen), sets forth their address (474 East Howard Drive, Sandy, Utah 94070-3418), sets forth the policy period (March 1, 1994 to October 29, 1994), describes the vehicle insured under the policy (the 1984 Ford Ranger pickup), sets forth the coverages provided and the premiums charged. Your State Farm Car Policy extends liability coverage to the named insureds, to relatives of the named insureds who reside with them, and extends liability coverage to others who use the 1984 Ford Ranger with the express or implied permission of the named insureds. Your State Farm Car Policy meets the statutory requirements of, and clearly is, an owner's policy.

Your State Farm Car Policy Is Not an Operator's Policy

An "operator's policy," on the other hand, insures the person named as the insured against loss from the liability imposed upon him by law for damages arising out of the insured's use of **any** motor vehicle not owned by him. See, Utah Code Annotated §31A-22-303(1)(b)(ii). Emphasis added.

The State Farm Mutual Automobile Insurance Company's policy is not an "operator's policy." It does not attempt to, nor does it, extend liability coverage for an insured's use of "any motor vehicle" not owned by him. Rather, the State Farm Car Policy specifically limits the liability coverage extended for the use of vehicles not owned by him. Under the policy, for example, there is no coverage for non-owned cars the stated use of which is other than business or pleasure. R. 114. There is no coverage for non-owned cars while being repaired, serviced or used by any person while that person is working in any car business. R. 114. There is no coverage for the use of any "motor vehicle" which is not a "land motor vehicle with four or more wheels, which is designed for use mainly on public roads." R. 111. There is no coverage for "any vehicle while located for use as a dwelling or other premises." R. 111. There is no coverage for "a truck-tractor designed to pull a trailer or semitrailer." R. 111. There is no coverage for the insured's use of a non-owned, uninsured motorcycle. R. 111.

Your State Farm Car Policy does not conform to the statutory requirements of, nor does it attempt to qualify as, an "operator's policy."

Your State Farm Car Policy Extends Additional, But Limited, Coverage

Egelston claims that, because Your State Farm Car Policy extends coverage in

addition to the coverage required by the “owner’s policy” provisions of Utah Code Annotated §31A-22-303(1)(b)(i), and provides for certain, but limited, coverage when an insured operates a car other than the 1984 Ford Ranger pickup, the policy becomes an “operator’s policy” pursuant to the provisions of Utah Code Annotated §31A-22-303(1)(b)(ii). This position is without merit.

Utah Code Annotated §31A-22-303(2)(b) states:

A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may:

...

- (b) grant any lawful coverage in addition to the required motor vehicle liability coverage.

...

Utah law expressly allows the granting of any lawful coverage in addition to that required by the motor vehicle liability coverage. Your State Farm Car Policy does that. However, that extension of additional coverage does not transform the “owner’s policy” into an “operator’s policy.” Rather, the policy is an “owner’s policy” with additional, lawful, coverage granted as provided for by Utah law.

**5. Your State Farm Car Policy
does not extend liability coverage to the insured’s use of a
non-owned, uninsured motorcycle.**

Your State Farm Car Policy limits its liability coverage to the insured’s use of “your car” and to the use of certain other defined “cars.” “Car” is defined as “a land motor vehicle with four or more wheels, which is designed to use mainly on public roads. . .” A two-wheeled motorcycle is not a “car.”

The Utah Court of Appeals recognized this distinction. In construing the distinction between “an automobile” and “a motorcycle” the Utah Court of Appeals has stated that “although either (term “automobile” or “motorcycle”) may be considered a ‘motor vehicle,’ under a common understanding of the terms a ‘motorcycle’ is not an ‘automobile.’” See: Bear River Mutual Ins. Co. V. Wright, 880 P.2d 1019 (Utah Ct. App. 1989). As a matter of law, a “motorcycle” is not “a car” and no liability coverage extends to the insured’s use of a non-owned, uninsured motorcycle.

X
Conclusion

It is respectfully submitted that the issues concerning “ambiguity” were not properly preserved for this appeal. Those issues were not raised, briefed, addressed nor preserved at the trial court level and cannot be raised for the first time on appeal.

It is further submitted that Egelston specifically concurred at the trial court level that there was no ambiguity to the insurance contract. The issue of “ambiguity” is a factual issue, to be resolved by the “finder of fact.” Plaintiff filed her motion alleging that there no genuine issues of material fact in dispute and that this matter was ripe for Summary Judgment pursuant to Rule 56, Utah Rules of Civil Procedure. In addition, her counsel agreed at the trial court hearing that the policy clearly excluded liability coverage to Christensen's use of a motorcycle; “Yes, I agree that the policy excludes coverage for motorcycles in its language and the issue is, does the law allow that when it comes to an operator?”

Moreover, Your State Farm Car Policy is not ambiguous on its face. A review of the insurance contract shows that Your State Farm Car Policy clearly excludes liability coverage to the insured's operation of a non-owned, uninsured, two-wheeled motorcycle. On its face, Your State Farm Car Policy is plain, clear and unambiguous.

Egelston does not have standing to raise the issue of “ambiguity.” She was not a party to the contract. Those who were party to the contract have not contested the plain language of the contract. There is no extrinsic evidence to support a contention that the parties to the contract intended there to be a different meaning that the clear, plain, unambiguous provisions of the policy.

Your State Farm Car Policy complies with the provisions of Utah law. It is an operator's policy which extends the coverage required by the appropriate statutory provisions.

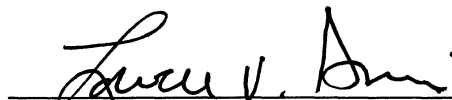
Finally, Your State Farm Car Policy grants additional coverage, in compliance with Utah law authorizing such additional coverage. However, simply by extending additional coverage, Your State Farm Car Policy does not become an "operator's policy" requiring the granting of additional coverage beyond that contemplated by the parties to the contract.

Relief Sought

State Farm Mutual Automobile Insurance Company requests that this Court affirm the Summary Judgment entered by the trial court, entering Judgment in favor of State Farm Mutual Automobile Insurance Company that its policy does not extend coverage for the accident which is the basis of Egelston's claims against Christensen, that State Farm Mutual Automobile Insurance Company owes no duty to indemnify nor defend Christensen from the claims asserted by Egelston.

DATED this 2d day of December 1997.

SMITH & GLAUSER, P.C.



LOWELL V. SMITH

Attorneys for State Farm Mutual Automobile
Insurance Company

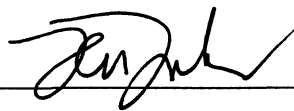
CERTIFICATE OF MAILING

I certify that two true and correct copies of the foregoing BRIEF OF APPELLANT were mailed, postage prepaid, December 1, 1997, to the following:

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A handwritten signature in black ink, appearing to read "L. Zane Gill", is written over a horizontal line.

XI
Addendum

Attached hereto as an Addendum are the following materials:

1. Constitutional Provisions none
2. Statutes
 - a. Utah Code Annotated § 31A-22-302
 - b. Utah Code Annotated §31A-22-303
 - c. Utah Code Annotated §41-12a-301
3. Rules
 - a. Utah Rules of Civil Procedure, Rule 56
4. Parts of the Record of Central Importance
 - a. Complete Copy of Your State Farm Car Policy
NOTE: Egelston's brief only contained part of the insurance policy and excluded significant portions of the policy, including the declarations sheet.
 - b. Transcript of Hearing on Cross-Motions for Summary Judgment - March 5, 1997
 - c. Order, April 23, 1997

STATUTES

31A-22-302. Required components of motor vehicle insurance policies — Exceptions.

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:

(a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

(b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(4); and

(c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(8)(c).

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

(3) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators. Owners and operators of motorcycles, trailers, and semitrailers are not covered by personal injury protection coverages in connection with injuries incurred while operating any of these vehicles.

1992

31A-22-303. Motor vehicle liability coverage [Effective until July 1, 1997].

(1) In addition to complying with the requirements of Chapter 21 and Part II of Chapter 22, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

(a) name the motor vehicle owner or operator in whose name the policy was purchased, state that named insured's address, the coverage afforded, the premium charged, the policy period, and the limits of liability;

(b) (i) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(c) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

(ii) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insured's use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owner's policy under Subsection (1)(b)(i); and

(c) except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured.

(2) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may:

(a) provide for the prorating of the insurance under that policy with other valid and collectible insurance;

(b) grant any lawful coverage in addition to the required motor vehicle liability coverage;

(c) if the policy is issued to a person other than a motor vehicle business, limit the coverage afforded to a motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent; and

(d) if issued to a motor vehicle business, restrict coverage afforded to anyone other than the motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent.

(3) Motor vehicle liability coverage need not insure any liability:

(a) under any workers' compensation law under Title 35;

(b) resulting from bodily injury to or death of an employee of the named insured, other than a domestic employee, while engaged in the employment of the insured, or while engaged in the operation, maintenance, or repair of a designated vehicle; or

(c) resulting from damage to property owned by, rented to, bailed to, or transported by the insured.

(4) An insurance carrier providing motor vehicle liability coverage has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

(5) A policy containing motor vehicle liability coverage imposes on the insurer the duty to defend, in good faith, any person insured under the policy against any claim or suit seeking damages which would be payable under the policy.

(6) (a) If a policy containing motor vehicle liability coverage provides an insurer with the defense of lack of cooperation on the part of the insured, that defense is not effective against a third person making a claim against the insurer, unless there was collusion between the third person and the insured.

(b) If the defense of lack of cooperation is not effective against the claimant, after payment, the insurer is subrogated to the injured person's claim against the insured to the extent of the payment and is entitled to reimbursement by the insured after the injured third person has been made whole with respect to the claim against the insured.

(7) A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who usually makes his home in the same household but temporarily lives elsewhere, if each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

1988

PART IV

PROOF OF OWNER'S OR OPERATOR'S SECURITY

41-12a-401. Means of providing proof of owner's or operator's security.

(1) Whenever proof of owner's or operator's security is required under this chapter, it may be provided by filing with the department any of the following:

(a) a certificate of insurance under Section 41-12a-402 or 41-12a-403;

(b) a copy of a surety bond under Section 41-12a-405;

(c) a certificate of deposit of money or securities issued by the state treasurer under Section 41-12a-406; or

(d) a certificate of self-funded coverage under Section 41-12a-407.

(2) Whenever the term "proof of financial responsibility" is used in this title, it shall be read as "proof of owner's or operator's security."

1991

RULES

Rule 56. Summary judgment.

(a) **For claimant.** A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For defending party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and proceedings thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case not fully adjudicated on motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of affidavits; further testimony; defense required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits made in bad faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Compiler's Notes. — This rule is similar to Rule 56, F.R.C.P.

Cross-References. — Contempt generally, §§ 78-7-18, 78-32-1 et seq.

PARTS OF THE RECORD OF CENTRAL IMPORTANCE

- A. Complete Copy of State Farm Car Policy
- B. Transcript of Hearing on Cross-Motions for Summary
March 5, 1997
- C. Order, April 23, 1997

STATE FARM FIRE AND CASUALTY COMPANY

3001 8TH AVENUE GREELEY, CO 80638

NAMED INSURED

POLICY NUMBER S19 6228-D29-44A

44-1237-50 A
 CHRISTENSEN, TIM & LYNDIA
 474 E HOWARD DRIVE
 SANDY UT 84070-3418

POLICY PERIOD MAR-01-94 TO OCT-29-94

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.

SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE.--

| DESCRIBED VEHICLE | YEAR | MAKE | MODEL | BODY STYLE | VEHICLE IDENTIFICATION NUMBER | CLASS |
|----------------------|------|------|--------|------------|-------------------------------|--------|
| | 84 | FORD | RANGER | PICKUP | 1FTBR11S3EUB78179 | 103H11 |

COVERAGES (AS DEFINED IN POLICY)

MBOL-PREMIUM-COVERAGE NAME-LIMITS OF LIABILITY

\$214.96 BODILY INJURY/PROPERTY DAMAGE LIABILITY
 LIMITS OF LIABILITY-COVERAGE A-BODILY INJURY
 EACH PERSON, EACH ACCIDENT
 25,000 50,000
 LIMITS OF LIABILITY-COVERAGE A-PROPERTY DAMAGE
 EACH ACCIDENT
 25,000

1 \$34.31 NO-FAULT (SEE POLICY SCHEDULE FOR LIMITS.)
 100 \$33.51 \$100 DEDUCTIBLE COMPREHENSIVE
 250 \$97.96 \$250 DEDUCTIBLE COLLISION
 \$10.71 UNINSURED MOTOR VEHICLE
 LIMITS OF LIABILITY-U

EACH PERSON, EACH ACCIDENT
 25,000 50,000

\$11.90 UNDERINSURED MOTOR VEHICLE
 LIMITS OF LIABILITY-W

EACH PERSON, EACH ACCIDENT
 25,000 50,000

\$403.35 TOTAL PREMIUM FOR POLICY PERIOD MAR-01-94 TO OCT-29-94
 \$305.10 CURRENT 6 MONTH PREMIUM FOR APR-29-94 TO OCT-29-94

EXCEPTIONS AND ENDORSEMENTS

FINANCED- HAYES BROTHERS FINANCIAL, 3400 S STATE ST, MIDVALE UT 84047.

6078FF.1 AMENDMENT OF NO-FAULT--COVERAGE P.
 6082P AMENDATORY ENDORSEMENT: CHANGES-DEFINED WORDS; INSURED'S DUTIES;
 COVERAGES.
 6835EE.1 AMENDMENT OF UNINSURED MOTOR VEHICLE-COVERAGE U AND UNDERINSURED
 MOTOR VEHICLE-COVERAGE W.

THIS IS YOUR DECLARATIONS PAGE
 PLEASE ATTACH IT TO YOUR AUTO POLICY BOOKLET

AGENT: DAVE BRANDT
 PHONE: (801) 571-6210

1237-50

OUR POLICY CONSISTS OF THIS PAGE ANY ENDORSEMENTS AND THE POLICY BOOKLET FORM

9944.3

PLEASE KEEP TOGETHER

PLACED POLICY S196228-44

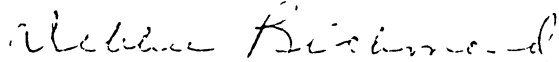
155-4977

CERTIFICATE OF CERTIFIED POLICY

I, the undersigned, do hereby certify that I am custodian of the records pertaining to the issuance of policies by the Utah/Wyoming Division of the State Farm Fire and Casualty Company of Bloomington, Illinois.

I further certify that the attached policy, number **S19 6228-D29-44A**, is a copy of the policy issued to **TIM AND LYNDIA CHRISTENSEN** of **474 E. HOWARD DRIVE, SANDY, UTAH 84070-3418**, together with endorsements issued subsequently and effective as follows based on our available records:

The policy was in effect on the accident date of **JULY 20, 1994**.



Debbie Richmond, CPCU
Underwriting Operations Superintendent

STATE OF COLORADO

COUNTY OF WELD

Subscribed and sworn to before me this **20th** day of **SEPTEMBER, 1996**.



Kathleen A. Eldridge
Notary Public

MY COMMISSION EXPIRES: NOVEMBER 6, 1999

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE. (SEE "REPORTING A CLAIM-INSURED'S DUTIES" IN THIS POLICY.)

places *your car*; or
an added *car* and:
if it is a *private passenger*
private passenger cars,
if it is other than a *private*
insure all *cars*
by *you* and *your spouse*;
or *your spouse*;
you or *your spouse*:
all us about it within 30
or *your spouse*; and
you or *your spouse* has in
olicies, tell us which one it
ay us any added amount;
ed Car - means a *car* no
n the name of:
ou, your spouse;
ny *relative* unless at the
ss:
the *car* has been descr
page of a liability poli
----- 20 1-----

Authorized Representative



State Farm Fire and Casualty Company, Home Office, Bloomington, Illinois
Mountain States Office • 3001 8th Avenue • Greeley, Colorado 80638-0001

YOUR STATE FARM CAR POLICY

Policy Form GF 9944.3

STATE FARM FIRE AND CASUALTY COMPANY
BLOOMINGTON, ILLINOIS
A STOCK COMPANY
DEFINED WORDS
WHICH ARE USED IN SEVERAL PARTS OF THE POLICY

We define some words to shorten the policy. This makes it easier to read and understand. Defined words are printed in bold face italics. *You* can pick them out easily.

Bodily Injury — means *bodily injury* to a *person* and sickness, disease or death which results from it.

Car — means a land motor vehicle with four or more wheels, which is designed for use mainly on public roads. It does not include:

- 1 any vehicle while located for use as a dwelling or other premises, or
- 2 a truck-tractor designed to pull a trailer or semitrailer.

Car Business — means a business or job where the purpose is to sell, lease, repair, service, transport, store or park land motor vehicles or trailers.

Insured — means the *person, persons* or organization defined as *insureds* in the specific coverage.

Loss — defined in sections IV and V.

Newly Acquired Car — means a *car* newly owned by *you* or *your spouse* if it:

- 1 replaces *your car*; or
- 2 is an added *car* and
 - a. if it is a *private passenger car*, we insure all other *private passenger cars*, or
 - b. if it is other than a *private passenger car*, we insure all *cars*

owned by *you* and *your spouse* on the date of its delivery to *you* or *your spouse*;

but only if *you* or *your spouse*:

- 1 tell us about it within 30 days after its delivery to *you* or *your spouse*; and
- 2 if *you* or *your spouse* has more than one of our *car* policies, tell us which one is to apply, and
- 3 pay us any added amount due.

Non-Owned Car — means a *car* not owned by or registered or leased in the name of:

- 1 *you, your spouse*;
- 2 any *relative* unless at the time of the accident or loss:
 - a. the *car* has been described on the declarations page of a liability policy some time within the preceding 30 days, and

b. *you, your spouse* or a *relative* who does not own or lease such *car* is the driver.

3 any other *person* residing in the same household as *you, your spouse* or any *relative*; or

4 an employer of *you, your spouse* or any *relative*.

Non-owned car does not include a *car*:

- 1 which is not in the lawful possession of the *person* operating it, or
- 2 which has been operated by, rented by or in the possession of an *insured* during any part of each of the preceding 21 days, or
- 3 operated by an *insured* who has operated or rented any *car* otherwise qualifying as a *non-owned car* during any part of more than 45 days in the 365 days preceding the date of the accident or loss.

Occupying — means in, on, entering or alighting from.

Person — means a human being.

Private Passenger Car — means a *car*:

- 1 with four wheels,
- 2 of the private passenger or station wagon type, and
- 3 designed solely to carry *persons* and their luggage.

Relative — means a *person* related to *you* or *your spouse* by blood, marriage, adoption or guardianship who lives with *you*, including those who usually make their home in *your* household but temporarily live elsewhere.

Spouse — means *your* husband or wife while living with *you*.

Temporary Substitute Car — means a *car* not owned by *you* or *your spouse*, if it replaces *your car* for a short time. Its use has to be with the consent of the owner. *Your car* has to be out of use due to its breakdown, repair, servicing, damage or loss. A *temporary substitute car* is not considered a *non-owned car*.

Utility Vehicle — means a motor vehicle with:

- 1 a pickup, panel or van body, and
- 2 a Gross Vehicle Weight of 10,000 pounds or less.

You* or *Your — means the named insured or named insureds shown on the declarations page.

Your Car — means the *car* or the vehicle described on the declarations page.

DECLARATIONS CONTINUED

We, the State Farm Fire and Casualty Company, agree to insure *you* according to the terms of this policy based:

1. on *your* payment of premium for the coverages *you* chose; and
2. in reliance on *your* statements in these declarations.

You agree, by acceptance of this policy that:

1. the statements in these declarations are *your* statements and are true; and
2. we insure *you* on the basis *your* statements are true; and

3. this policy contains all of the agreements between *you* and us or any of our agents.

Unless otherwise stated in the exceptions space on the declarations page, *your* statements are:

1. Ownership. *You* are the sole owner of *your car*.
2. Insurance and License History. Neither *you* nor any member of *your* household within the past 3 years has had:
 - a. vehicle insurance canceled by an insurer; or
 - b. a license to drive or vehicle registration suspended, revoked or refused.
3. Use. *Your car* is used for pleasure and business.

WHEN AND WHERE COVERAGE APPLIES

When Coverage Applies

The coverages *you* chose apply to accidents and *losses* that take place during the policy period.

The policy period is shown under "Policy Period" on the declarations page and is for successive periods of six months each for which *you* pay the renewal premium. Payments must be made on or before the end of the current policy period. The policy period begins and ends at 12:01 A.M. Standard Time at the address shown on the declarations page.

Where Coverage Applies

The coverages *you* chose apply:

1. in the United States of America, its territories and possessions or Canada; or
2. while the insured vehicle is being shipped between their ports.

The liability, no-fault and physical damage coverages also apply in Mexico within 50 miles of the United States border. A physical damage coverage *loss* in Mexico is determined on the basis of cost at the nearest United States point.

Death, dismemberment and loss of sight coverage applies anywhere in the world.

FINANCED VEHICLES

If a creditor is shown in the declarations, we may pay any comprehensive or collision *loss* to:

1. *you* and, if unpaid, the repairer; or
2. *you* and such creditor, as its interest may appear, when we find it is not practical to repair *your car*; or
3. the creditor, as to its interest, if *your car* has been repossessed.

When we pay the creditor for *loss* for which *you* are not covered, we are entitled to the creditor's right of recovery against *you* to the extent of our payment. Our right of

recovery shall not impair the creditor's right to recover the full amount of its claim.

The coverage for the creditor's interest only is valid until we terminate it. We will not terminate such coverage because of:

1. any act or negligence of the owner or borrower; or
2. a change in the ownership or interest unknown to us, unless the creditor knew of it and failed to tell us within 10 days; or
3. an error in the description of the vehicle.

The date of termination of the creditor's interest will be at least 10 days after the date we mail the termination notice.

REPORTING A CLAIM – INSURED'S DUTIES

1. Notice to Us of an Accident or Loss

The *insured* must give us or one of our agents written notice of the accident or *loss* as soon as reasonably possible. The notice must give us:

- a. *your* name; and
- b. the names and addresses of all *persons* involved; and
- c. the hour, date, place and facts of the accident or *loss*; and
- d. the names and addresses of witnesses.

2. Notice to Us of Claim or Suit

If a claim or suit is made against an *insured*, that *insured* must at once send us every demand, notice or claim made and every summons or legal process received.

3. Other Duties Under the Physical Damage Coverages

When there is a *loss*, *you* or the owner of the property also shall:

- a. make a prompt report to the police when the *loss* is the result of theft or larceny.
- b. protect the damaged vehicle. We will pay any reasonable expense incurred to do it.
- c. show us the damage, when we ask.
- d. provide all records, receipts and invoices, or certified copies of them. We may make copies.
- e. answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

4. Other Duties Under No-Fault, Uninsured Motor Vehicle, Underinsured Motor Vehicle and Death, Dismemberment and Loss of Sight Coverages

The *person* making claim also shall:

- a. give us all the details about the death, injury, treatment and other information we need to determine the amount payable.
- b. be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of

the report will be sent to the *person* upon written request. If the *person* is dead or unable to act, his or her legal representative shall authorize us to obtain all medical reports and records.

- c. (1) under the uninsured motor vehicle and underinsured motor vehicle coverages let us see the insured *car* the *person occupied* in the accident;
- (2) under the uninsured motor vehicle coverage report a "hit-and-run" accident to the police within 24 hours and to us within 30 days. Failure to give this notice within the time specified does not invalidate coverage if:
 - (a) the *person* making claim shows it was not reasonably possible to give the notice within the prescribed time; and
 - (b) the notice is given as soon as reasonably possible.
- d. under the no-fault, uninsured motor vehicle and underinsured motor vehicle coverages, send us at once a copy of all suit papers when the party liable for the accident is sued for these damages.
- e. under the no-fault and death, dismemberment and loss of sight coverages, give us proof of claim on forms we furnish.

5. Insured's Duty to Cooperate With Us

The *insured* shall cooperate with us and, when asked, assist us in:

- a. making settlements;
- b. securing and giving evidence; -
- c. attending, and getting witnesses to attend, hearings and trials.

The *insured* shall not, except at his or her own cost, voluntarily:

- a. make any payment or assume any obligation to others; or
- b. incur any expense, other than for first aid to others.

SECTION I – LIABILITY – COVERAGE A

You have this coverage if “A” appears in the “Coverages” space on the declarations page

We will

- 1 pay damages which an *insured* becomes legally liable to pay because of
 - a *bodily injury* to others, and
 - b damage to or destruction of property including loss of its use, caused by accident resulting from the ownership, maintenance or use of *your car*; and
- 2 defend any suit against an *insured* for such damages with attorneys hired and paid by us. We will not defend any suit after we have paid the applicable limit of our liability for the accident which is the basis of the lawsuit

In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident

- 1 Court costs of any suit for damages
- 2 Interest on damages owed by the *insured* due to a judgment and accruing
 - a after the judgment, and until we pay, offer or deposit in court, the amount due under this coverage, or
 - b before the judgment, where owed by law, but only on that part of the judgment we pay
- 3 Premiums or costs of bonds
 - a to secure the release of an *insured's* property attached under a court order. The amount of the bond we pay for shall not be more than our limit of liability, and
 - b required to appeal a decision in a suit for damages if we have not paid our limit of liability that applies to the suit, and
 - c up to \$250 for each bail bond needed because of an accident or traffic violationWe have no duty to furnish or apply for any bonds
- 4 Expense incurred by an *insured*:
 - a for loss of wages or salary up to \$35 per day if we ask the *insured* to attend the trial of a civil suit
 - b for first aid to others at the time of the accident
 - c at our request

We have the right to investigate, negotiate and settle any claim or suit

Coverage for the Use of Other Cars

The liability coverage extends to the use, by an *insured*, of a *newly acquired car*, a *temporary substitute car* or a *non-owned car*.

Who Is an Insured

When we refer to *your car*, a *newly acquired car* or a *temporary substitute car*, *insured* means

- 1 *you*;
- 2 *your spouse*;
- 3 the *relatives* of the first *person* named in the declarations,
- 4 any other *person* while using such a *car* if its use is within the scope of consent of *you* or *your spouse*; and
- 5 any other *person* or organization liable for the use of such a *car* by one of the above *insureds*.

When we refer to a *non-owned car*, *insured* means

- 1 the first *person* named in the declarations,
- 2 his or her *spouse*;
- 3 their *relatives*; and
- 4 any *person* or organization which does not own or hire the *car* but is liable for its use by one of the above *persons*.

THERE IS NO COVERAGE FOR NON-OWNED CARS:

- 1 IF THE DECLARATIONS STATE THE “USE” OF *YOUR CAR* IS OTHER THAN “PLEASURE AND BUSINESS”, OR
2. WHILE
 - a BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR
 - b USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or *occupied* by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

Trailer Coverage

- 1 Trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2 a. below, are covered while owned or used by an *insured*.

Farm implements and farm wagons are considered trailers while pulled on public roads by a *car* we insure for liability.

These trailers are not described in the declarations and no extra premium is charged.

- 2 The following trailers are covered only if described on the declarations page and extra premium is paid
 - a those trailers designed to be pulled by a *private passenger car* or a *utility vehicle*:
 - (1) if designed to carry *persons*; or
 - (2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described and no extra premium paid), or
 - (3) while used as premises for office, store or display purposes, or
 - b any trailer not designed for use with a *private passenger car* or a *utility vehicle*.

THERE IS NO COVERAGE WHEN A TRAILER IS USED WITH A MOTOR VEHICLE OWNED OR HIRED BY *YOU* WHICH WE DO NOT INSURE FOR LIABILITY COVERAGE

Limits of Liability

The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability – Coverage A – Bodily Injury, Each Person, Each Accident" Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

The amount of property damage liability coverage is shown on the declarations page under "Limits of Liability – Coverage A – Property Damage, Each Accident"

We will pay damages for which an *insured* is legally liable up to these amounts

The limits of liability are not increased because more than one *person* or organization may be an *insured*.

A motor vehicle and attached trailer are one vehicle Therefore, the limits are not increased.

When two or more motor vehicles are insured under this section the limits apply separately to each

When Coverage A Does Not Apply

In addition to the limitations of coverage in "Who Is an Insured" and "Trailer Coverage"

THERE IS NO COVERAGE

- 1 WHILE ANY VEHICLE INSURED UNDER THIS SECTION IS
 - a RENTED TO OTHERS OR USED TO CARRY *PERSONS* FOR A CHARGE

This does not apply to the use on a share expense basis of

- (1) a *private passenger car*; or
 - (2) a *utility vehicle*, if all passengers are riding in that area of the vehicle designed by the manufacturer of the vehicle for carrying passengers
- b BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS*.
 - (1) If no other valid and collectible insurance is applicable, this provision applies to a motor vehicle business, its officers, agents and employees, but only to the extent the limits of liability of this policy exceed the limits of liability required by Utah law
 - (2) This provision in its entirety does not apply to
 - (a) *you* or *your spouse*;
 - (b) any *relative*;
 - (c) any resident of *your* household, or
 - (d) any agent, employee or partner of *you*, *your spouse*, any *relative* or such resident

This coverage is excess for (c) and (d) above

2 FOR ANY *BODILY INJURY* TO

- a A FELLOW EMPLOYEE WHILE ON THE JOB AND ARISING FROM THE MAINTENANCE OR USE OF A VEHICLE BY ANOTHER EMPLOYEE IN THE EMPLOYER'S BUSINESS *You* and *your spouse* are covered for such injury to a fellow employee
- b ANY EMPLOYEE OF AN *INSURED* ARISING OUT OF HIS OR HER EMPLOYMENT This does not apply to a household employee who is not covered or required to be covered under any worker's compensation insurance

3 FOR ANY DAMAGES

- a FOR WHICH THE UNITED STATES MIGHT BE LIABLE FOR THE *INSURED'S* USE OF ANY VEHICLE
- b TO PROPERTY OWNED BY, RENTED TO, IN CHARGE OF OR TRANSPORTED BY AN *INSURED*. But coverage applies to a rented
 - (1) residence, or
 - (2) private garage
 damaged by a *car* we insure

- 4 FOR ANY OBLIGATION OF AN *INSURED*, OR HIS OR HER INSURER, UNDER ANY TYPE OF WORKER'S COMPENSATION OR DISABILITY OR SIMILAR LAW
- 5 FOR LIABILITY ASSUMED BY THE *INSURED* UNDER ANY CONTRACT OR AGREEMENT

If There Is Other Liability Coverage

1 Policies Issued by Us to You

If two or more vehicle liability policies issued by us to *you* apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability

2 Other Liability Coverage Available From Other Sources

Subject to item 1, if other vehicle liability coverage applies, we are liable only for our share of the damages. Our share is the per cent that the limit of liability of this policy bears to the total of all vehicle liability coverage applicable to the accident.

3 Temporary Substitute Car, Non-Owned Car, Trailer

If a *temporary substitute car*, a *non-owned car* or a trailer designed for use with a *private passenger car* or *utility vehicle* has other vehicle liability coverage on it, then this coverage is excess

4 Newly Acquired Car -

THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE LIABILITY COVERAGE ON A *NEWLY ACQUIRED CAR*.

Motor Vehicle Compulsory Insurance Law or Financial Responsibility Law

1 Out-of-State Coverage

If an *insured* under the liability coverage is in another state or Canada and, as a non-resident, becomes subject to its motor vehicle compulsory insurance, financial responsibility or similar law

- a the policy will be interpreted to give the coverage required by the law, and
- b the coverage so given replaces any coverage in this policy to the extent required by the law for the *insured's* operation, maintenance or use of a *car* insured under this policy

Any coverage so extended shall be reduced to the extent other coverage applies to the accident. In no event shall a *person* collect more than once

2 Financial Responsibility Law

When certified under any law as proof of future financial responsibility, and while required during the policy period, this policy shall comply with such law to the extent required. The *insured* agrees to repay us for any payment we would not have had to make under the terms of this policy except for this agreement

Duplicate Coverage and Arbitration

If an *insured* is or would be held legally liable for the damages resulting from *bodily injury* sustained by any *person* to whom benefits required under no-fault coverage have been paid by another insurer, including the Worker's Compensation Fund of Utah, we will reimburse the other insurer for the payment, but not in excess of the amount recoverable

The issue of liability and the amount will be decided by mandatory, binding arbitration between the insurers.

SECTION II – NO-FAULT – COVERAGE P

You have this coverage if “P” with a number beside it appears in the “Coverages” space on the declarations page “P” with a number beside it is *your* coverage symbol.

Check *your* coverage symbol with the Schedule in the limits of liability for the choice of options *you* made.

What We Pay

We will pay in accordance with Utah law for *bodily injury* to an *insured* caused by accident resulting from the maintenance or use of a *motor vehicle* as a *motor vehicle*:

1. **Medical Benefits.** This is reimbursement for reasonable expenses incurred for necessary:
 - a. medical, hospital, dental, surgical, ambulance, X-ray, nursing and rehabilitative services;
 - b. eyeglasses, hearing aids and prosthetic devices; and
 - c. remedial treatment by a recognized religious method of healing.

The most we will pay for all expenses is the amount shown in the Schedule for *your* coverage symbol. The most we will pay for expenses for services and products furnished more than three years after the date of the accident is \$3,000, less any amount paid or payable for expenses incurred during the first three years.

2. **Disability Benefits.** This is reimbursement for:
 - a. 85% of an *insured's* actual loss of:
 - (1) gross income from salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm; or
 - (2) earning capacitydue to that *insured's* continuous inability to work during a period that:
 - (1) begins three days after the date of the accident; and
 - (2) ends either:
 - (a) when the *insured* is able to return to his or her usual job;
 - (b) when the *insured* dies; or
 - (c) 52 weeks after the period begins,whichever occurs first.If the *insured's* inability to work continues for more than two consecutive weeks after the accident, the period begins on the date of the accident. The most we will pay is the amount shown in the Schedule for *your* coverage symbol.
 - b. reasonable expenses incurred for actually rendered services the *insured* would have performed for his or her household except for the injury. These services must be performed during a period that:
 - (1) begins three days after the date of the injury; and

- (2) ends either:
 - (a) when the *insured* can perform these services;
 - (b) when the *insured* dies; or
 - (c) 365 days after the date of the accident,whichever occurs first.

If the *insured's* disability continues for more than 14 consecutive days after the accident, the period begins on the date of the accident. The most we pay per day is \$20.

3. **Funeral Benefits.** This is reimbursement for reasonable funeral, burial or cremation expenses. The most we will pay for an *insured* who dies is the amount shown in the Schedule for *your* coverage symbol.
4. **Survivors' Benefits.** This is an amount paid to an *insured's* heirs when an *insured* dies as the result of the accident. The most we will pay, if the death occurs within three years of the accident, is shown in the Schedule for *your* coverage symbol. If the death occurs more than three years after the date of the accident, the most we will pay is \$3,000.

Definitions

Insured – means:

1. *you, your spouse* or any *relative*:
 - a. while *occupying* a motor vehicle; or
 - b. when a *pedestrian*, if the *bodily injury* results from physical contact with a *motor vehicle*; or
2. any other *person*:
 - a. while *occupying your car* or a *newly acquired car* with the permission of:
 - (1) *you, your spouse, any relative*; or
 - (2) the *person* driving such *car* with *your* permission; or
 - b. while in Utah, when struck as a *pedestrian* by *your car* or a *newly acquired car*.

Motor Vehicle – means:

1. any self-propelled vehicle which is designed for use upon a highway including trailers and semi-trailers designed for use with such vehicles; and
2. a vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

It does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels and well drillers

Owner — means a *person* who

- 1 holds legal title to a *motor vehicle*; or
- 2 has the right to possession of a *motor vehicle* under a security agreement or lease with option to buy

Pedestrian — means a *person* who is not occupying a *motor vehicle*.

When Coverage P Does Not Apply

THERE IS NO COVERAGE FOR **BODILY INJURY TO ANY PERSON:**

- 1 WHILE *OCCUPYING* OR WHEN STRUCK BY A *MOTOR VEHICLE* OWNED BY *YOU* OR ANY *RELATIVE* WHICH IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.
- 2 WHILE OPERATING *YOUR CAR* OR A *NEWLY ACQUIRED CAR*:
 - a WITHOUT THE CONSENT OF *YOU* OR *YOUR SPOUSE*, OR
 - b IF NOT IN LAWFUL POSSESSION OF IT
- 3 WHOSE CONDUCT CONTRIBUTED TO THE INJURY UNDER ANY OF THE FOLLOWING CIRCUMSTANCES
 - a CAUSING **BODILY INJURY** TO HIMSELF OR HERSELF INTENTIONALLY, OR
 - b WHILE COMMITTING A FELONY
- 4 WHILE OPERATING OR *OCCUPYING* A MOTORCYCLE OWNED BY *YOU*, *YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY,
- 5 ARISING OUT OF THE USE OF ANY *MOTOR VEHICLE* WHILE LOCATED FOR USE AS A RESIDENCE OR PREMISES,
- 6 DUE TO WAR OF ANY KIND, OR
- 7 RESULTING FROM THE HAZARDOUS PROPERTIES OF NUCLEAR MATERIALS

Settlement of Loss

1. Deciding Amount —

If the *insured* and we cannot agree, it will be decided by arbitration upon written request of the *insured*. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a

judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on each party. The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

2. Payment of Any Amount Due

We will pay any amount due

- a to the *insured*, or to any *person* or organization providing medical services or products,
- b to a parent or guardian, if the *insured* is a minor or an incompetent *person*;
- c to the surviving *spouse*; or
- d at our option, to a *person* authorized by law to receive such payment.

Payments will be made on a monthly basis within 35 days after we have proof of the amount due

If There Is Other Coverage

1. No Duplication

No *person* shall recover twice for the same expense or loss

2. When you, your spouse or any relative sustains bodily injury while occupying or when struck by a motor vehicle which is not your car or a newly acquired car this coverage applies

- a as excess to any similar coverage which applies to the vehicle as primary coverage, but
- b only in the amount by which it exceeds the primary coverage

If coverage under more than one policy applies as excess

- a the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess, and
- b we are liable only for our share. Our share is that per cent of the expenses or loss that the limit of liability of this policy for that benefit bears to the total limit of liability for that benefit of all no-fault coverage applicable as excess to the accident

3. If Coverage Is Available From More Than One Insurer

Subject to items 1 and 2 above, if two or more insurers are liable to pay no-fault benefits

- a the total amount payable from all insurers shall not exceed the amount payable under the policy with the highest limit of liability, and
- b we are liable only for our share. Our share is that per cent of the expenses or loss that the limit of liability of this policy for that benefit bears to the total limit of liability for that benefit of all no-fault coverage applicable to the accident.

Constitutionality

If a court declares any of the Utah motor vehicle insurance law invalid, we may refigure the premium and change the

coverage. If the refigured premium is greater than what has been paid, *you* must pay us the difference.

Limits of Liability

1. **The Most We Pay.** The most we pay for each *insured* who sustains *bodily injury* in any one accident shall not exceed the limit shown in the Schedule applicable to each benefit for *your* coverage symbol. Any amount payable shall be reduced by all amounts the *insured* is entitled to receive:
 - a under any worker's compensation, disability or similar law, or
 - b from the United States or any of its agencies because of active duty in the military services

2. Schedule

| Coverage Symbol | Medical Benefits | Disability Benefits Loss of Income Per Week | Funeral Benefits | Survivors' Benefits |
|-----------------|------------------|--|------------------|---------------------|
| P1 | \$ 3,000 | \$250 | \$ 1,500 | \$ 3,000 |
| P2 | 5,000 | 250 | 1,500 | 3,000 |
| P3 | 10,000 | 250 | 1,500 | 5,000 |
| P4 | 25,000 | 250 | 1,500 | 5,000 |
| P5 | 100,000 | 300 | 2,500 | 10,000 |

SECTION III -- UNINSURED MOTOR VEHICLE -- COVERAGE U AND UNDERINSURED MOTOR VEHICLE -- COVERAGE W

UNINSURED MOTOR VEHICLE -- COVERAGE U

You have this coverage if "U" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* an *insured* is legally entitled to collect from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* must be caused by accident arising out of the operation, maintenance or use of an *uninsured motor vehicle*.

Uninsured Motor Vehicle -- means:

1. a land motor vehicle, the ownership, maintenance or use of which is:
 - a. not insured or bonded for bodily injury liability at the time of the accident; or
 - b. insured or bonded for bodily injury liability at the time of the accident; but
 - (1) the limits of liability are less than required by the financial responsibility act of the state where *your car* is mainly garaged; or
 - (2) the insuring company denies coverage or is or becomes insolvent; or
2. an unidentified "hit-and-run" land motor vehicle which was the proximate cause of the *bodily injury*. The *insured* must show the existence of the other motor vehicle by clear and convincing evidence, which shall consist of more than the *insured's* testimony.

An *uninsured motor vehicle* does not include a land motor vehicle:

1. insured under the liability coverage of this policy;
2. furnished for the regular use of *you, your spouse* or any *relative*;
3. owned or operated by a self-insurer under any motor vehicle financial responsibility law, a motor carrier law or any similar law;
4. owned by any government or any of its political subdivisions or agencies;
5. designed for use mainly off public roads except while on public roads; or
6. while located for use as premises.

Who Is an Insured

Insured -- means the *person* or *persons* covered by uninsured motor vehicle coverage.

This is:

1. *you, your spouse* and *your relatives*; and
2. any other *person* while *occupying*:

- a. *your car*, a *temporary substitute car*, a *newly acquired car* or a trailer attached to such *car*.

Such vehicle has to be used within the scope of the consent of *you* or *your spouse*; or

- b. a *car* not owned by *you, your spouse* or any *relative*, or a trailer attached to such a *car*. It has to be driven by the first *person* named in the declarations or that *person's spouse* and within the scope of the owner's consent.

Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*.

3. any *person* entitled to recover damages because of *bodily injury* to an *insured* under 1. and 2. above.

Deciding Fault and Amount

Two questions must be decided by agreement between the *insured* and us:

1. Is the *insured* legally entitled to collect damages from the owner or driver of the *uninsured motor vehicle*; and
2. If so, in what amount?

If there is no agreement, these questions will be decided by arbitration upon written request of the *insured*. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on each party.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

We are not bound by any judgment against any *person* or organization obtained without our written consent.

UNDERINSURED MOTOR VEHICLE COVERAGE W

You have this coverage if "W" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* an *insured* is legally entitled to collect from the owner or driver of an *underinsured motor vehicle*. The *bodily injury* must be caused by accident arising out of the operation, maintenance or use of an *underinsured motor vehicle*.

THERE IS NO COVERAGE UNTIL:

1. THE LIMITS OF LIABILITY OF ALL BODILY INJURY LIABILITY BONDS AND POLICIES THAT APPLY HAVE BEEN USED UP BY PAYMENT OF JUDGMENTS OR SETTLEMENTS TO OTHER *PERSONS*; OR
2. SUCH LIMITS OF LIABILITY OR REMAINING PART OF THEM HAVE BEEN OFFERED TO THE *INSURED*.

Underinsured Motor Vehicle — means a land motor vehicle:

1. the ownership, maintenance or use of which is insured or bonded for bodily injury liability at the time of the accident; and
2. whose limits of liability for bodily injury liability:
 - a. are less than the amount of the *insured's* damages; or
 - b. have been reduced by payments to *persons* other than the *insured* to less than the amount of the *insured's* damages.

An *underinsured motor vehicle* does not include a land motor vehicle:

1. insured under the liability coverage of this policy;
2. furnished for the regular use of *you, your spouse* or any *relative*;
3. owned by any government or any of its political subdivisions or agencies;
4. designed for use mainly off public roads except while on public roads;
5. while located for use as premises; or
6. defined as an "*uninsured motor vehicle*" in *your* policy.

Who Is an Insured

Insured — means the *person* or *persons* covered by underinsured motor vehicle coverage:

This is:

1. The first *person* named in the declarations;
2. his or her *spouse*;
3. their *relatives*; and
4. any other *person* while *occupying*:
 - a. *your car*, a *temporary substitute car*, a *newly acquired car*, or a trailer attached to such *car*. Such vehicle has to be used within the scope of the consent of *you* or *your spouse*; or
 - b. a *car* not owned by *you, your spouse* or any *relative*, or a trailer attached to such a *car*. It has to be driven by the first *person* named in the declarations or that *person's spouse* and within the scope of the owner's consent.

Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*.

5. any *person* entitled to recover damages because of *bodily injury* to an *insured* under 1 through 4 above.

Deciding Fault and Amount

Two questions must be decided by agreement between the *insured* and us:

1. Is the *insured* legally entitled to collect damages from the owner or driver of the *underinsured motor vehicle*; and
2. If so, in what amount?

If there is no agreement, these questions shall be decided by arbitration upon written request of the *insured* or us.

Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on each party.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

We are not bound by any judgment against any *person* or organization obtained without our written consent.

Payment of Any Amount Due — Coverages U and W

We will pay any amount due:

1. to the *insured*;
2. to a parent or guardian if the *insured* is a minor or an incompetent *person*;
3. to the surviving *spouse*; or
4. at our option, to a *person* authorized by law to receive such payment.

Limits of Liability — Coverage U

1. The amount of coverage is shown on the declarations page under "Limits of Liability — U — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Any amount payable under this coverage shall be reduced by any amount paid or payable to or for the *insured*:
 - a. by or for any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or
 - b. for *bodily injury* under the liability coverage.
3. Any payment made to a *person* under this coverage shall reduce any amount payable to that *person* under the bodily injury liability coverage.
4. Any amount paid or payable under:
 - a. the no-fault coverage; or
 - b. any worker's compensation, disability benefits, or similar law

will not be paid for again as damages under this coverage. This does not reduce the limits of liability of this coverage.
5. The limits of liability are not increased because:
 - a. more than one vehicle is insured under this policy; or
 - b. more than one *person* is insured at the time of the accident.

Limits of Liability – Coverage W

1. The amount of coverage is shown on the declarations page under "Limits of Liability – W – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.
2. Any amount paid or payable under:
 - a. the no-fault coverage; or
 - b. any worker's compensation, disability benefits or similar law

will not be paid for again as damages under this coverage. This does not reduce the limits of liability of this coverage.
3. Any payment made to a *person* under this coverage shall reduce any amount payable to that *person* for *bodily injury* under the liability coverage.
4. The limits of liability are not increased because:
 - a. more than one vehicle is insured under this policy;
 - b. more than one *person* is insured at the time of the accident; or
 - c. more than one *underinsured motor vehicle* is involved in the same accident.
5. The most we pay will be the lesser of:
 - a. the difference between the amount of the *insured's* damages for *bodily injury*, and the amount paid to the *insured* by or for any *person* or organization

who is or may be held legally liable for the *bodily injury*; or

- b. the limits of liability of this coverage.

When Coverage U Does Not Apply

THERE IS NO COVERAGE:

1. FOR ANY *INSURED* WHO, WITHOUT OUR WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*.
2. FOR *BODILY INJURY* TO AN *INSURED*:
 - a. WHILE *OCCUPYING*, OR
 - b. THROUGH BEING STRUCK BY
A MOTOR VEHICLE OWNED BY *YOU, YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY.
3. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKER'S COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY.
 - b. A SELF-INSURER UNDER ANY WORKER'S COMPENSATION, OR DISABILITY BENEFITS OR SIMILAR LAW.
 - c. ANY GOVERNMENTAL BODY OR AGENCY.

When Coverage W Does Not Apply

THERE IS NO COVERAGE:

1. FOR ANY *INSURED* WHO, WITHOUT OUR WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY* AND THEREBY IMPAIRS OUR RIGHT TO RECOVER OUR PAYMENTS.
2. FOR *BODILY INJURY* TO ANY *INSURED*:
 - a. WHILE *OCCUPYING*, OR
 - b. THROUGH BEING STRUCK BY
A MOTOR VEHICLE OWNED BY *YOU, YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY.
3. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKER'S COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY.
 - b. A SELF-INSURER UNDER ANY WORKER'S COMPENSATION, OR DISABILITY BENEFITS OR SIMILAR LAW.
 - c. ANY GOVERNMENTAL BODY OR AGENCY.

- 4 FOR PUNITIVE DAMAGES OR INTEREST AWARDED TO OR CLAIMED BY THE **INSURED**.
- 5 FOR ANY **PERSON** WHOSE CLAIM FOR **BODILY INJURY** ARISES OUT OF **BODILY INJURY** SUSTAINED BY ANOTHER **PERSON**.
- 6 FOR COSTS OR ATTORNEY FEES INCURRED BY, ON BEHALF OF, OR AWARDED TO THE **INSURED**.

If There Is Other Uninsured Motor Vehicle Coverage

- 1 Regardless of the number of motor vehicles involved, the number of **persons** covered or claims made, vehicles or premiums shown in the policy or premiums paid, the limit of liability for uninsured motor vehicle coverage shall not be added to or stacked upon limits for such coverage applying to other motor vehicles to determine the amount of coverage available to an **insured** injured in any one accident
- 2 If the **insured** sustains **bodily injury** and other uninsured motor vehicle coverage applies
 - a. the **insured** must elect one policy under which to make a claim, and
 - b. COVERAGE UNDER THIS POLICY DOES NOT APPLY IF THE **INSURED** ELECTS ANY OTHER UNINSURED MOTOR VEHICLE COVERAGE UNDER WHICH TO MAKE A CLAIM
- 3 THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER UNINSURED MOTOR VEHICLE COVERAGE ON A **NEWLY ACQUIRED CAR**.

If There Is Other Underinsured Motor Vehicle Coverage

- 1 If the **insured** sustains **bodily injury** as a pedestrian and other underinsured motor vehicle coverage applies
 - a the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability, and

- b we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all underinsured motor vehicle coverage applicable to the accident
- 2 If the **insured** sustains **bodily injury** while **occupying your car**, and **your car** is described on the declarations page of another policy providing underinsured motor vehicle coverage
 - a the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability, and
 - b we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all such underinsured motor vehicle coverage applicable to the accident.
- 3 If the **insured** sustains **bodily injury** while **occupying** a vehicle not owned by **you**, **your spouse** or any **relative**, this coverage applies
 - a as excess to any underinsured motor vehicle coverage which applies to the vehicle as primary coverage, but
 - b only in the amount by which it exceeds the primary coverage
- If coverage under more than one policy applies as excess
 - a the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess, and
 - b we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all underinsured motor vehicle coverage applicable as excess to the accident
- 4 THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER UNDERINSURED MOTOR VEHICLE COVERAGE ON A **NEWLY ACQUIRED CAR**.

SECTION IV – PHYSICAL DAMAGE COVERAGES

Loss – means, when used in this section, each direct and accidental loss of or damage to

- 1 **your car;**
- 2 its equipment which is common to the use of **your car** as a vehicle, or
- 3 clothes and luggage insured, and
- 4 a detachable living quarters attached or removed from **your car** for storage. Detachable living quarters includes its body and items securely fixed in place as a permanent part of the body. **You** must have told us about the living quarters before the **loss** and paid any extra premium needed

COMPREHENSIVE – COVERAGE D. **You** have this coverage if “D” appears in the “Coverages” space on the declarations page. If a deductible applies, the amount is shown by the number beside “D”

- 1 Loss to Your Car. We will pay for **loss** to **your car** EXCEPT **LOSS BY COLLISION** but only for the amount of each such **loss** in excess of the deductible amount, if any

Breakage of glass, or **loss** caused by missiles, falling objects, fire, theft, larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, is payable under this coverage. **Loss** due to hitting or being hit by a bird or an animal is payable under this coverage

- 2 We will repay **you** for transportation costs if **your car** is stolen. We will pay up to \$16 per day for the period that begins 48 hours after **you** tell us of the theft. The period ends when we offer to pay for **loss**.

COLLISION – 80% – COVERAGE F. **You** have this coverage if “F” appears in the “Coverages” space on the declarations page

We will pay 80% of the first \$250 and 100% over that amount of **loss** to **your car** caused by **collision**. If the **collision** is with another motor vehicle insured by us, we will pay 100% of the **loss**.

COLLISION – COVERAGE G. **You** have this coverage if “G” appears in the “Coverages” space on the declarations page. The deductible amount is shown by the number beside “G”

We will pay for **loss** to **your car** caused by **collision** but only for the amount of each such **loss** in excess of the deductible amount. If the **collision** is with another motor vehicle insured with us, **you** do not pay **your** deductible if it is \$100 or less as we pay it

Collision – means **your car** upset or hit or was hit by a vehicle or other object.

Clothes and Luggage – Comprehensive and Collision Coverages

We will pay for **loss** to clothes and luggage owned by the first **person** named in the declarations, his or her **spouse**, and their **relatives**. These items have to be in or on **your car**. **Your car** has to be covered under this policy for

- 1 Comprehensive, and the **loss** caused by fire, lightning, flood, falling objects, explosion, earthquake or theft. If the **loss** is due to theft, **YOUR ENTIRE CAR MUST HAVE BEEN STOLEN**, or
- 2 Collision, and the **loss** caused by **collision**.

We will pay up to \$200 for **loss** to clothes and luggage in excess of any deductible amount shown for comprehensive or collision. \$200 is the most we will pay in any one occurrence even though more than one **person** has a **loss**. This coverage is excess over any other coverage

Limit of Liability – Comprehensive and Collision Coverages

The limit of our liability for **loss** to property or any part of it is the lower of

- 1 the actual cash value, or
- 2 the cost of repair or replacement.

Actual cash value is determined by the market value, age and condition at the time the **loss** occurred. Any deductible amount that applies is then subtracted. The cost of repair or replacement is based upon

- 1 the cost of repair agreed upon by **you** and us, or
- 2 the lower of
 - a a competitive bid approved by us, or
 - b an estimate written based upon the prevailing competitive price. The prevailing competitive price means labor rates, parts prices and material prices charged by a substantial number of the repair facilities in the area where the **car** is to be repaired as determined by a survey made by us. If **you** ask, we will identify some facilities that will perform the repairs at the prevailing competitive price

Any deductible amount that applies is then subtracted

Settlement of Loss – Comprehensive and Collision Coverages

We have the right to settle a **loss** with **you** or the owner of the property in one of the following ways

- 1 pay up to the actual cash value,
- 2 pay to repair or replace the property or part with like kind and quality. If the repair or replacement

results in better than like kind and quality, *you* must pay for the amount of the betterment;

3. return the stolen property and pay for any damage due to the theft; or
4. take the property at an agreed value; but it cannot be abandoned to us.

If we can pay the *loss* under either comprehensive or collision, we will pay under the coverage where *you* collect the most.

When there is *loss* to *your car*, clothes and luggage in the same occurrence, any deductible will be applied first to the *loss* to *your car*. *You* pay only one deductible.

EMERGENCY ROAD SERVICE — COVERAGE H. *You* have this coverage if “H” appears in the “Coverages” space on the declarations page.

We will pay the fair cost *you* incur for *your car* for:

1. mechanical labor up to one hour at the place of its breakdown;
2. towing to the nearest place where the necessary repairs can be made during regular business hours if it will not run;
3. towing it out if it is stuck on or immediately next to a public highway;
4. delivery of gas, oil, loaned battery, or change of tire.
WE DO NOT PAY FOR THE COST OF THESE ITEMS.

CAR RENTAL EXPENSE — COVERAGE R. *You* have this coverage if “R” appears in the “Coverages” space on the declarations page.

We will repay *you* up to \$10 per day when *you* rent a *car* from a car rental agency or garage due to a *loss* to *your car* which would be payable under coverage D, F or G, starting:

1. when it cannot run due to the *loss*; or
2. if it can run, when *you* leave it at the shop for agreed repairs;

and ending when:

1. it has been repaired or replaced, or
2. we offer to pay for the *loss*, or
3. *you* incur 30 days rent,

whichever comes first.

Any car rent payable under coverage R is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

CAR RENTAL AND TRAVEL EXPENSES

COVERAGE R1. *You* have this coverage if “R1” appears in the “Coverages” space on the declarations page.

1. Car Rental Expense. We will:

- a. repay *you* up to \$16 per day when *you* rent a *car* from a car rental agency or garage; OR
- b. pay *you* \$10 per day if *you* do not rent a *car* while *your car* is not usable

due to a *loss* to *your car* which would be payable under coverage D, F or G.

This applies during a period starting:

- a. when *your car* cannot run due to the *loss*; or
- b. if *your car* can run, when *you* leave it at the shop for agreed repairs;

and ending:

- a. when it has been repaired or replaced, or
- b. (1) when we offer to pay for the *loss*, if *your car* is repairable, or
(2) five days after we offer to pay for the *loss*, if:
 - (a) *your car* was stolen and not recovered, or
 - (b) we declare it a total loss,

whichever comes first.

Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

2. Travel Expenses. If *your car* cannot run due to a *loss* which would be payable under coverage D, F or G more than 50 miles from home, we will repay *you* for expenses incurred by *you*, *your spouse* and any *relative* for:
 - a. Commercial transportation fares to continue to *your* destination or home.
 - b. Extra meals and lodging needed when the *loss* to *your car* causes a delay enroute. The expenses must be incurred between the time of the *loss* and *your* arrival at *your* destination or home or by the end of the fifth day, whichever occurs first.
 - c. Meals, lodging and commercial transportation fares incurred by *you* or a *person you* choose to drive *your car* from the place of repair to *your* destination or home.
3. Rental Car — Repayment of Deductible Amount Expense. We will repay the expense of any deductible amount *you* are required to pay the owner under comprehensive or collision coverage in effect on a substitute *car* rented from a car rental agency or garage.

Total Amount of Expenses Payable — Coverage R1

1. The most we will pay for the total of the “Car Rental Expense” and “Rental Car — Repayment of Deductible Amount Expense” incurred in any one occurrence is \$400.

- 2 The most we will pay for "Travel Expenses" incurred by all *persons* in any one occurrence is \$400

Trailer Coverage

- 1 **Owned Trailer**
Your trailer is covered
 - a when it is described on the declarations page of the policy, and
 - b for the coverages shown as applying to it.
- 2 **Non-Owned Trailer or Detachable Living Quarters**
Any physical damage coverage in force on *your car* applies to a non-owned
 - a trailer, if it is designed for use with a *private passenger car*, or
 - b detachable living quarters unit
 used by the first *person* named in the declarations, his or her *spouse* or their *relatives*.
 The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$500
 A non-owned trailer or detachable living quarters unit is one that:
 - a is not owned by or registered in the name of
 - (1) *you, your spouse, any relative;*
 - (2) any other *person* residing in the same household as *you, your spouse* or any *relative*; or
 - (3) an employer of *you, your spouse* or any *relative*; and
 - b has not been used by, rented by or in the possession of *you, your spouse* or any *relative* during any part of each of the preceding 21 days, and
 - c is used by *you, your spouse* or any *relative* and such *persons* have not used or rented any non-owned trailer or detachable living quarters unit for more than 45 days in the 365 days preceding the date of the accident or *loss*.

Coverage for the Use of Other Cars

The coverages in this section *you* have on *your car* extend to a *loss* to a *newly acquired car*, a *temporary substitute car* or a *non-owned car*. These coverages extend to a *non-owned car* while it is driven by or in the custody of an *insured*.

Insured — as used in this provision means

- 1 the first *person* named in the declarations,
- 2 his or her *spouse*; or
- 3 their *relatives*.

When Coverages D, F, G, H, R and R1 Do Not Apply
THERE IS NO COVERAGE FOR.

- 1 A **NON-OWNED CAR**:
 - a IF THE DECLARATIONS STATE THE "USE" OF *YOUR CAR* IS other than pleasure and business,
 - b WHILE BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR
 - c WHILE USED IN ANY OTHER BUSINESS OR OCCUPATION This does not apply to a *private passenger car* driven or occupied by the first *person* named in the declarations, his or her *spouse* or their *relatives*.
- 2 ANY VEHICLE WHILE
 - a RENTED TO OTHERS OR USED TO CARRY *PERSONS* FOR A CHARGE This does not apply to the use on a share expense basis, OR
 - b SUBJECT TO ANY LIEN, RENTAL OR SALES AGREEMENT NOT SHOWN IN THE DECLARATIONS
- 3 **LOSS TO ANY VEHICLE DUE TO:**
 - a TAKING BY ANY GOVERNMENTAL AUTHORITY,
 - b WAR OF ANY KIND,
 - c AND LIMITED TO WEAR AND TEAR, FREEZING, MECHANICAL OR ELECTRICAL BREAKDOWN OR FAILURE This does not apply when the *loss* is the result of a theft covered by this policy Nor does it apply to emergency road service, OR
 - d CONVERSION, EMBEZZLEMENT OR SECRESSION BY ANY *PERSON* WHO HAS THE VEHICLE DUE TO ANY LIEN, RENTAL OR SALES AGREEMENT
- 4 **TIRES** unless
 - a stolen, or damaged by fire or vandalism, or
 - b other *loss* covered by this section happens at the same time
- 5 **TAPES OR DISCS FOR RECORDING OR REPRODUCING SOUND**
- 6 **ANY RADAR DETECTOR**

If There Is Other Coverage

Policies Issued by Us to You

If two or more vehicle policies issued by us to *you* apply to the same *loss* or occurrence, we will pay under the policy with the highest limit

2 Coverage Available From Other Sources

Subject to item 1, if other coverage applies to the *loss* or expenses, we will pay only our share. Our share is the per cent the limit of liability of this policy bears to the total of all coverage that applies.

3 Temporary Substitute Car, Non-Owned Car, Trailer

If a *temporary substitute car*, a *non-owned car* or trailer designed for use with a *private passenger car* has other coverage on it, then this coverage is excess.

4 Newly Acquired Car

THIS INSURANCE DOES NOT APPLY IF THERE IS SIMILAR COVERAGE ON A *NEWLY ACQUIRED CAR*.

No Benefit to Bailee

These coverages shall not benefit any carrier or other bailee for hire liable for *loss*.

Two or More Vehicles

If two or more of *your cars* are insured for the same coverage, the coverage applies separately to each.

SECTION V – DEATH, DISMEMBERMENT AND LOSS OF SIGHT – COVERAGE S

DEATH, DISMEMBERMENT AND LOSS OF SIGHT – COVERAGE S

If “S” is shown in the “Coverages” space on the declarations page each *insured* has the coverage.

We will pay the amount shown in the schedule that applies for death, or *loss*, caused by accident. The *insured* has to be *occupying* or be struck by a land motor vehicle or trailer. The death or *loss* must be the direct result of the accident and not due to any other cause. The death or *loss* must occur within 90 days of the accident.

Insured – means a *person* listed under “Persons Insured – Coverage S” on the declarations page.

Loss – means the loss of

- 1 the foot or hand, cut off through or above the ankle or wrist, or
- 2 the whole thumb or finger, or
- 3 all sight.

The Most We Pay

The most we will pay because of the death of, or *loss* to, the *insured*, except as provided below, is shown under “Amounts” next to his or her name on the declarations page.

The amount shown in the schedule for death or *loss* is doubled for an *insured* who, at the time of the accident, is using the vehicle’s complete restraint system as recommended by the vehicle’s manufacturer.

If the *insured* dies as a result of this accident any payment made or due for *loss* reduces the amount of the death payment.

SCHEDULE

| | If amount under S in the declarations is | |
|-----------------------------------|--|----------|
| | \$5,000 | \$10,000 |
| Death | \$5,000 | \$10,000 |
| Loss of | | |
| hands, feet, sight of eyes, one | | |
| hand & one foot, or one hand or | | |
| one foot & sight of one eye | 5,000 | 10,000 |
| one hand or one foot, or sight of | | |
| one eye | 2,500 | 5,000 |
| thumb & finger on one hand, or | | |
| three fingers | 1,500 | 3,000 |
| any two fingers | 1,000 | 2,000 |

Payment of Any Amount Due

We will pay any amount due

- 1 to the *insured*;
- 2 to a parent or guardian if the *insured* is a minor or an incompetent *person*;
- 3 to the surviving *spouse*; or
- 4 at our option, to any *person* or organization authorized by law to receive such payment.

Any payment made is to its extent a complete discharge of our obligations. We are not responsible for the way the money is used.

Autopsy

We have the right to have an autopsy made where it is not forbidden by law.

When Coverage S Does Not Apply

THIS COVERAGE DOES NOT APPLY TO

1. AN *INSURED* WHILE ON THE JOB OPERATING *OCCUPYING*, LOADING OR UNLOADING
 - a AN EMERGENCY VEHICLE OR
 - b A VEHICLE USED IN THE *INSURED'S* BUSINESS OR JOB

But 1 b does not apply if the vehicle is

 - (1) a *private passenger car* or school bus, or
 - (2) of the pickup or van type, with a Gross Vehicle Weight of 10,000 pounds or less, while not used for delivery
- 2 AN *INSURED* WHILE
 - a ON THE JOB IN ANY *CAR BUSINESS*; OR
 - b *OCCUPYING* ANY
 - (1) VEHICLE WHILE BEING USED IN A RACE, OR
 - (2) MILITARY VEHICLE
- 3 AN *INSURED* WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY A MOTOR VEHICLE OR TRAILER
 - a THAT RUNS ON RAILS OR CRAWLER-TREADS,
 - b DESIGNED FOR USE MAINLY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS, OR
 - c LOCATED FOR USE AS PREMISES
- 4 THE DEATH OF OR *LOSS* TO AN *INSURED* DUE TO
 - a DISEASE except pus forming infection due to *bodily injury* received in the accident, or
 - b SUICIDE OR ATTEMPTED SUICIDE WHILE SANE OR INSANE, OR
 - c WAR OF ANY KIND

CONDITIONS

1. Policy Changes

- a Policy Terms The terms of this policy may be changed or waived only by
 - (1) an endorsement signed by one of our executive officers, or
 - (2) the revision of this policy term to give broader coverage without an extra charge. If any coverage *you* carry is changed to give broader coverage, we will give *you* the broader coverage without the issuance of a new policy as of the date we make the change effective.
- b Change of Interest No change of interest in this policy is effective unless we consent in writing. However, if *you* die, we will protect as named insured, except under death, dismemberment and loss of sight coverage
 - (1) *your* surviving spouse;
 - (2) any *person* with proper custody of *your* car, a *newly acquired car* or a *temporary substitute car* until a legal representative is qualified, and then
 - (3) the legal representative while acting within the scope of his or her duties

Policy notice requirements are met by mailing the notice to the deceased named insured's last known address
- c Consent of Beneficiary. Consent of the beneficiary under death, dismemberment and loss of sight coverage is not needed to cancel or change the policy
- d Joint and Individual Interests When there are two or more named insureds, each acts for all to cancel or change the policy

2. Suit Against Us

There is no right of action against us

- a until all the terms of this policy have been met, and
- b under the liability coverage, until the amount of damages an *insured* is legally liable to pay has been finally determined by
 - (1) judgment after actual trial, and appeal if any, or
 - (2) agreement between the *insured*, the claimant and us

Bankruptcy or insolvency of the *insured* or his or her estate shall not relieve us of our obligations
- c under all other coverages until the earlier of
 - (1) 60 days after we receive proof of loss,
 - (2) our waiver of proof of loss, or
 - (3) our denial of full payment

3. Our Right to Recover Our Payments

- a Death, dismemberment and loss of sight coverage payments are not recoverable by us
- b Under uninsured motor vehicle coverage
 - (1) we are subrogated to the extent of our payments to the proceeds of any settlement the injured *person* recovers from any party liable for the *bodily injury*.
 - (2) if the *person* to or for whom we have made payment has not recovered from the party at fault, he or she shall
 - (a) keep these rights in trust for us,
 - (b) execute any legal papers we need, and
 - (c) when we ask, take action through our representative to recover our payments

We are to be repaid our payments, costs and fees of collection out of any recovery
- c Under no-fault coverage we are entitled to recover our payments in accord with Utah law
- d Under underinsured motor vehicle coverage
 - (1) we are entitled, to the extent of our payments, to the proceeds of any settlement the *insured* recovers from any party liable for the *bodily injury*, other than payments from bodily injury liability bonds or policies made prior to our payment.
 - (2) if the *insured* has not been fully compensated for the *bodily injury* by the party at fault and we make payment for the *bodily injury*, the *insured* shall
 - (a) keep these rights in trust for us
 - (b) execute any legal papers we need, and
 - (c) when we ask, take action through our representative to recover the amount of our payments

We are to be repaid our payments, costs and fees of collection out of any such recovery
- e Under all other coverages the right of recovery of any party we pay passes to us. Such party shall
 - (1) not hurt our rights to recover, and
 - (2) help us get our money back

4. Cancellation

How You May Cancel *You* may cancel *your* policy by notifying us in writing of the date to cancel, which must be later than the date *you* mail or deliver it to us. We may waive these requirements by confirming the date and time of cancellation to *you* in writing.

How and When We May Cancel We may cancel *your* policy by written notice, mailed to *your* last known

address. The notice shall give the date cancellation is effective. The mailing of it shall be sufficient proof of notice.

If we mail or deliver a notice of cancellation to *you* during the first 59 days following the policy effective date, the cancellation notice will be mailed to *you* at least 10 days before the cancellation effective date.

After the policy has been in force for more than 59 days, any notice of cancellation will be mailed to *you* at least:

- a. 10 days before the cancellation effective date if the cancellation is because *you* did not pay the premium; or
- b. 30 days before the cancellation effective date if the cancellation is because of any other reason.

Unless we mail or deliver a notice of cancellation to *you* within 59 days of the policy effective date, we will not cancel *your* policy before the end of the current policy period unless:

- a. *you* fail to pay the premium when due; or
- b. *you* or any other *person* who usually drives *your car* have had his or her driver's license under suspension or revocation:
 - (1) during the policy period; or
 - (2) if the policy is renewed:
 - (a) during the current policy period; or
 - (b) 180 days just before its latest renewal date.

Return of Unearned Premium. If *you* cancel, premium may be earned on a short rate basis. If we cancel, premium will be earned on a pro-rata basis. Any unearned premium may be returned at the time we cancel or within a reasonable time thereafter. Delay in the return of unearned premium does not affect the cancellation.

5. Renewal

Unless we mail or deliver to *you* a notice of cancellation or a notice of our intention not to renew the policy, we

agree to renew the policy for the next policy period upon *your* payment of the renewal premium when due. It is agreed that the renewal premium will be based upon the rates in effect, the coverages carried, the applicable limits of liability, deductibles and other elements that affect the premium that apply at the time of renewal.

Other elements that may affect *your* premium include, but are not limited to:

- a. drivers of *your car* and their ages and marital status;
- b. *your car* and its use;
- c. eligibility for discounts or other premium credits;
- d. applicability of a surcharge based either on accident history, or on other factors.

A notice of our intention to not renew will be mailed to *your* last known address at least 30 days before the end of the current policy period. The mailing of it shall be sufficient proof of notice.

6. Change of Residence

When we receive notice that the location of principal garaging of the vehicle described on the declarations page has been changed, we have the right to recalculate the premium based on the coverages and rates applicable in the new location. When the change of location is from one state to another and *you* are a risk still acceptable to us at the time *you* notify us of the change, we shall replace this policy with the policy form currently in use in the new state of garaging. The word "state" means one of the United States of America, the District of Columbia or a province of Canada.

7. Participating Policy

You are entitled to participate in a distribution of the earnings of the company as determined by our Board of Directors in accordance with the company's Articles of Incorporation, as amended.

In Witness Whereof, the State Farm Fire and Casualty Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.



SECRETARY



PRESIDENT

6078FF.1 AMENDMENT OF NO-FAULT — COVERAGE P

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy if issued with it, unless a different effective date is shown for the endorsement on the Declarations Page. If issued at a later date the name, policy number and effective date must be shown.

Issued by the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as shown by the company's name on the policy of which this endorsement is a part.

Named Insured _____

Policy Number _____ Effective Date _____

12:01 A.M. Standard Time

In consideration of the premium charged, it is agreed that SECTION II – NO-FAULT – COVERAGE P of *your* policy is changed as follows:

When Coverage P Does Not Apply

1. Item 1 is deleted.
2. The following provision is added:

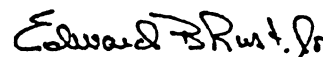
THERE IS NO COVERAGE UNDER THIS POLICY FOR *BODILY INJURY* TO ANY *PERSON* WHO IS INJURED:

a. WHILE *OCCUPYING A MOTOR VEHICLE* WHICH IS:

- (1) OWNED BY OR FURNISHED FOR THE REGULAR USE OF *YOU* OR ANY *RELATIVE*; AND
- (2) NOT INSURED FOR NO-FAULT COVERAGE UNDER THIS POLICY.

b. WHEN STRUCK BY A *MOTOR VEHICLE* WHICH IS:

- (1) OWNED BY THE INJURED *PERSON*; AND
- (2) NOT INSURED FOR NO-FAULT COVERAGE UNDER THIS POLICY.



President

6885EE.1 AMENDMENT OF UNINSURED MOTOR VEHICLE – COVERAGE U AND UNDERINSURED MOTOR VEHICLE – COVERAGE W

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy unless a different effective date is shown for the endorsement on the Declarations Page.

Issued by the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as shown by the company's name on the policy of which this endorsement is a part.

In consideration of the premium charged, it is agreed that SECTION III – UNINSURED MOTOR VEHICLE – COVERAGE U AND UNDERINSURED MOTOR VEHICLE – COVERAGE W of *your* policy is changed as follows:

1. Item 2 under **When Coverage U Does Not Apply** is changed to read:
 2. FOR *BODILY INJURY* TO ANY *INSURED* WHILE *OCCUPYING* A MOTOR VEHICLE OWNED BY *YOU*, *YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY.
2. Item 2 under **When Coverage W Does Not Apply** is changed to read:

FOR *BODILY INJURY* TO ANY *INSURED* WHILE *OCCUPYING* A MOTOR VEHICLE OWNED BY *YOU*, *YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY.
3. The provision titled **If There Is Other Uninsured Motor Vehicle Coverage** is changed to read:

If There Is Other Uninsured Motor Vehicle Coverage

 1. If the *insured* sustains *bodily injury* as a *pedestrian*, or while *occupying your car* and *your car* is described on the declarations page of another policy providing uninsured motor vehicle coverage:
 - a. the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability; and
 - b. we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all such uninsured motor vehicle coverage applicable to the accident.
 2. If the *insured* sustains *bodily injury* while *occupying* a vehicle not owned by *you*, *your spouse* or any *relative*, this coverage applies:
 - a. as excess to any uninsured motor vehicle coverage which applies to the vehicle as primary coverage, but
 - b. only in the amount by which it exceeds the primary coverage.

If coverage under more than one policy applies as excess:

 - a. the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess; and
 - b. we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all uninsured motor vehicle coverage applicable as excess to the accident.

3. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER UNINSURED MOTOR VEHICLE COVERAGE ON A **NEWLY ACQUIRED CAR**.
4. The provision titled **If There Is Other Underinsured Motor Vehicle Coverage** is changed to read:
 1. Regardless of the number of motor vehicles involved, the number of *persons* covered or claims made, vehicles or premiums shown in the policy or premiums paid, the limit of liability for underinsured motor vehicle coverage may not be added to or stacked upon limits for such coverage applying to other motor vehicles to determine the amount of coverage available to an *insured* injured in any one accident.
 2. If the *insured* sustains **bodily injury** as a pedestrian or while *occupying* a vehicle not owned by the *insured* or a *relative* and other underinsured motorist coverage applies:
 - a. the *insured* must elect one policy under which to make a claim; and
 - b. COVERAGE UNDER THIS POLICY DOES NOT APPLY IF RECOVERY IS AVAILABLE UNDER THE UNDERINSURED MOTOR VEHICLE COVERAGE OF THE ELECTED POLICY.
 3. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER UNDERINSURED MOTOR VEHICLE COVERAGE ON A **NEWLY ACQUIRED CAR**.



President

6082P AMENDATORY ENDORSEMENT

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy unless a different effective date is shown for the endorsement on the Declarations Page.

Issued by the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as shown by the company's name on the policy of which this endorsement is a part.

In consideration of the premium charged, it is agreed *your* policy is changed as follows:

1. The definition of *non-owned car* under **DEFINED WORDS** is changed to read: increased by an additional 21 days for each such additional policy.

Non-Owned Car – means a *car* not owned, registered or leased by:

1. *you, your spouse;*
2. any *relative* unless at the time of the accident or *loss*:
 - a. the *car* currently is or has within the last 30 days been insured for liability coverage; and
 - b. the driver is an *insured* who does not own or lease the *car* ;
3. any other *person* residing in the same household as *you, your spouse* or any *relative*; or
4. an employer of *you, your spouse* or any *relative*.

Non-owned car does not include a:

1. rented *car* while it is used in connection with the *insured's* employment or business; or
2. *car* which has been operated or rented by or in the possession of an *insured* during any part of each of the last 21 or more consecutive days. If the *insured* is an *insured* under one or more other car policies issued by us, the 21 day limit is

A *non-owned car* must be a *car* in the lawful possession of the *person* operating it.

2. REPORTING A CLAIM – INSURED'S DUTIES

- a. The following provision is added to item 4:

The *person* making claim also shall answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

- b. Item 4b is changed to read:

The *person* making claim also shall:

- b. be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of the report will be sent to the *person* upon written request. The *person*, or his or her legal representative if the *person* is dead or unable to act, shall authorize us to obtain all medical reports and records.

3. SECTION IV – PHYSICAL DAMAGE COVERAGES

- a. The provision titled **Limit of Liability – Comprehensive and Collision Coverages** is changed to read:

6082P

The limit of our liability for *loss* to property or any part of it is the lower of:

1. the actual cash value; or
2. the cost of repair or replacement.

Actual cash value is determined by the market value, age and condition at the time the *loss* occurred. Any deductible amount that applies is then subtracted.

The cost of repair or replacement is based upon one of the following:

1. the cost of repair or replacement agreed upon by *you* and us;
2. a competitive bid approved by us; or
3. an estimate written based upon the prevailing competitive price. The prevailing competitive price means prices charged by a majority of the repair market in the area where the *car* is to be repaired as determined by a survey made by us. If *you* ask, we will identify some facilities that will perform the repairs at the prevailing competitive price. We will include in the estimate parts sufficient to restore the vehicle to its pre-loss condition. *You* agree with us that such parts may include either parts furnished by the vehicle's manufacturer or parts from other sources including non-original equipment manufacturers.

Any deductible amount that applies is then subtracted.

- b. The first paragraph under **Settlement of Loss – Comprehensive and Collision Coverages** is changed to read:

We have the right to settle a *loss* with *you* or the owner of the property in one of the following ways:

1. pay the agreed upon actual cash value of the property at the time of the *loss* in exchange for the damaged property. If the owner and we cannot agree on the actual cash value, either party may demand an appraisal as described below. If the owner keeps the damaged property, we will deduct its value after the *loss* from our payment. The damaged property cannot be abandoned to us;
2. pay to:
 - a. repair the damaged property or part, or
 - b. replace the property or part.If the repair or replacement results in betterment, *you* must pay for the amount of betterment; or
3. return the stolen property and pay for any damage due to the theft.

Appraisal under item 1 above shall be conducted according to the following procedure. Each party shall select an appraiser. These two shall select a third appraiser. The written decision of any two appraisers shall be binding. The cost of the appraiser shall be paid by the party who hired him or her. The cost of the third appraiser and other appraisal expenses shall be shared equally by both parties. We do not waive any of our rights by agreeing to an

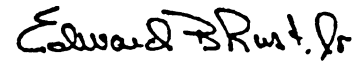
appraisal. We have the right to move the damaged property, at our expense, to reduce storage costs during the appraisal process.

The Settlement of Loss provision for comprehensive and collision coverages incorporates the Limit of Liability provision of those coverages.

c. Trailer Coverage

Items b and c under "A non-owned trailer or detachable living quarters unit is one that:" are changed to read:

- b. has not been used or rented by or in the possession of *you, your spouse* or any *relative* during any part of each of the last 21 or more consecutive days. If *you* are insured by one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy; and
- c. is not rented and used in connection with the employment or business of *you, your spouse* or any *relative*.



President

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-ooOoo-

| | |
|----------------------|-------------------------|
| STATE FARM, |) CIVIL NO. 960901334CV |
| Plaintiff, |) |
| v. |) MOTION FOR SUMMARY |
| |) JUDGMENT |
| CHRISTENSEN, et al., |) |
| Defendants. |) March 5, 1997 |

-ooOoo-

MOTION FOR SUMMARY JUDGMENT, before
JUDGE IWASAKI, transcribed from videotape by DEANNA
M. CHANDLER, Certified Shorthand Reporter and
Notary Public in and for the State of Utah.

-ooOoo-



REPORTING SERVICES, LLC

525 FIRST INTERSTATE PLAZA
170 SOUTH MAIN STREET
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(801) 328-1188 / 1-800-DEPOMAX
FAX 328-1189

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A P P E A R A N C E S

FOR STATE FARM: Mr. Lowell V. Smith
HANSON, EPPERSON & SMITH
4 Triad Center, #500
Salt Lake City, Utah 84180

FOR CHRISTENSEN: Mr. L. Zane Gill
215 South State, #545
Salt Lake City, Utah 84111

FOR EGGLESTON: Mr. Al Gray
ROBERT J. DEBRY & ASSOCIATES
3875 Market Street
West Valley City, Utah 84119

1 Wednesday, March 5, 1997: 8:29 a.m.

2

3 THE COURT: Before me this morning is
4 State Farm Auto v. Christensen and Eggleston. It's
5 Case No. 960901334CV. Can I ask for appearances?

6 MR. SMITH: Your Honor, Lowell Smith
7 for State Farm Mutual Automobile Insurance Company.

8 THE COURT: Thank you.

9 MR. GRAY: Al Gray for Katherine
10 Eggleston, Your Honor.

11 THE COURT: Thank you, Mr. Gray.

12 MR. GILL: L. Zane Gill on behalf of
13 Jack Christensen, Your Honor.

14 THE COURT: Thank you, Mr. Gill.

15 MR. SMITH: Your Honor, I may mention
16 that I talked to Dick Nemelka this morning, who
17 represents Fritz Mudrow, and he said that he would
18 not be appearing today.

19 THE COURT: All right, thank you. And
20 Mr. Belnap, co-counsel with Mr. Gill; is that
21 right?

22 MR. GILL: I have not talked to him but
23 I don't expect him to be here, Your Honor.

24 THE COURT: Okay.

25 MR. SMITH: Your Honor, he's co-counsel

1 on the cross-claim for damages filed by Eggleston,
2 so he's not really involved in the hearing this
3 morning.

4 THE COURT: I appreciate that. Thank
5 you, Mr. Smith.

6 Before the Court is Cross Motions for
7 Summary Judgment. Mr. Gray, I appreciate the
8 courtesy copies that you have provided the Court.
9 I used them liberally, I marked them up, so I
10 appreciate your delivering them to me. I've got
11 Cross Motions for Summary Judgment, I've got
12 Memorandum in Support in Opposition from both. But
13 correct me if I'm wrong, Mr. Gray, you did not file
14 a reply in this?

15 MR. GRAY: That's correct, Your Honor.

16 THE COURT: Thank you very much. The
17 issue before the Court is whether or not the policy
18 in question is either an owner's policy or an
19 operator's policy pursuant to the definitions or
20 the guidelines set forth in the statute as well as
21 case law. I had an opportunity to read all the
22 briefings. Mr. Smith, why don't you begin.

23 MR. SMITH: Thank you, Your Honor.

24 THE COURT: As you begin, let me ask
25 you a question that was on my mind as I was going

1 through this. While your position is that it is an
2 owner's policy and not an operator's policy, is
3 there ever an instance when any insurance company
4 writes an owner's policy and an operator's policy
5 in the same policy?

6 MR. SMITH: Typically not, Your Honor.

7 THE COURT: Okay.

8 MR. SMITH: Typically, if it's going to
9 be an operator's policy, a specific policy is
10 issued for that type of coverage. And the reason
11 for that is some people don't own motor vehicles
12 but they do drive motor vehicles, and so they want
13 to have an operator's policy. If someone owns a
14 motor vehicle, they get that type of insurance, and
15 it extends to certain other vehicles that are
16 operated by the insured but it's not unlimited.
17 And so the policies that the insurance companies
18 typically issue are an owner's policy with certain
19 extended coverage but not an operator's policy.

20 THE COURT: And the key word you use is
21 "typically." Does State Farm ever issue policies
22 where they're both covered as an owner and
23 operator, as Mr. Gray has indicated, that this
24 policy is sort of a hybrid?

25 MR. SMITH: My understanding is, Your

1 Honor, and I haven't really investigated whether
2 they've ever done it, but I don't know of an
3 instance where they have done that, and I've
4 represented State Farm since 1980 in the State of
5 Utah.

6 THE COURT: And this was for
7 information only, Mr. Gray. I'm still basing it
8 upon the contents of the memorandum of arguments
9 (inaudible.)

10 You may proceed, Mr. Smith.

11 MR. SMITH: Your Honor, you've hit the
12 key issues squarely head on. And let me just tell
13 the Court briefly, instead of reiterating
14 everything that's in our memorandum, there's
15 certain things that one can look at to determine
16 whether this is owner's or an operator's policy.
17 And the definitions and the requirements are set
18 forth in Utah Code Annotated 31-A-22303. For an
19 owner's policy it has to designate the name of the
20 insured, state the insured's address, the coverage
21 address, the coverage afforded and the premiums
22 charged. And in addition to that, it lists by
23 appropriate reference all the motor vehicles on
24 which coverage is granted. That's exactly what we
25 have here. The Ranger -- or the Ford -- I think it

1 was a Ranger.

2 THE COURT: 1984 Ford Ranger.

3 MR. SMITH: Yes, was specifically
4 described as the described motor vehicle. It's
5 listed on the policy. It is described. And so it
6 isn't an owner's policy; it covers that car and
7 anyone else who uses that car with the permission
8 of the named insured. It clearly meets that
9 definition.

10 Now, Mr. Gray has raised that it's also
11 an operator's policy, but it doesn't meet the
12 requirements that are set forth in the 3031-II,
13 because an operator's policy insures the person
14 named as the insured against loss from the
15 liability imposed upon him for damages, arising out
16 of the insured use of any motor vehicle.

17 In order to be an operator's policy, it
18 has to extend coverage to any motor vehicle that
19 the insured operates. And this policy doesn't. It
20 says we will insure certain classes of cars that
21 the named insured operates: A temporary
22 substitute, a newly acquired car, and any other car
23 that you're operating with the permission of the
24 insured. And specifically, "car" is defined to
25 have four wheels and intended primarily for use on

1 the public highways.

2 THE COURT: Mr. Gray seems to indicate
3 that instead of using car, (inaudible) a vehicle,
4 as defined by statute, which would include a
5 motorcycle.

6 MR. SMITH: Yes. And if we had offered
7 and written an operator's policy, we would have had
8 to insure motor vehicles, which would have included
9 the motorcycle. But in this case we didn't, and we
10 specifically said in here, this is the only
11 coverage that we are extending is for the limited
12 described vehicles, cars, that are used in here.

13 Now, an argument may be raised as to,
14 well, can the insurance company do that? And I
15 would just point out to the Court Utah Code
16 Annotated 31-A1-1032 that says: This title, which
17 is the insurance code, restricts otherwise
18 legitimate business activity. What this title does
19 not prohibit is permitted unless contrary to other
20 provisions of Utah law.

21 We can do that, and State Farm's
22 position has been on these owner's policies is we
23 want to extend additional coverage for someone that
24 purchases insurance under our policy, but we don't
25 give unlimited policy. We are not insuring you for

1 every motor vehicle you operate. If you want that
2 kind of a coverage, you have to purchase a policy
3 for that and you have to pay an additional
4 premium. But we do want to extend coverage for the
5 use of the cars that you list, and other cars that
6 are substitutes or newly acquired vehicles or the
7 other cars that you operate.

8 The risk inherent in operating a
9 motorcycle are significantly more than a motor
10 vehicle, a car, and so we want to rate that
11 appropriately, assuming all of the circumstances
12 and things that face that. And that's why it's not
13 an owner's policy and an operator's.

14 THE COURT: This isn't exactly a fact
15 but suppose the policy issued by State Farm covered
16 both an automobile and a named motorcycle.

17 MR. SMITH: You bet.

18 THE COURT: And then it would be
19 covered under the automobile and name of the
20 cycle. But where would it be if you had that same
21 extended coverage to include any other car? Would
22 you still limit it to a vehicle with four wheels on
23 it, or would you then extend it to a motor vehicle
24 to include other operated motorcycles?

25 MR. SMITH: When motorcycles are

1 insured, there's a separated policy that's issued
2 for that because of the greater risks that are
3 involved, and they're not listed on the policy as a
4 -- they can be listed as a described motor vehicle
5 on which anybody else who's driving that motorcycle
6 has coverage, but we don't extend coverage to you
7 operating other motorcycles unless you purchase
8 that type of operator's insurance policy.

9 THE COURT: And you say the coverage
10 would be as stated in this policy, as a car only?

11 MR. SMITH: Correct. The Court
12 understands the issue, and I'd be happy to address
13 any other issues that you have. The Barber case
14 doesn't really apply. It's a different statutory
15 scheme, it talked about resident relatives being
16 insured to the same extent as the others, and I
17 think we made that distinction in the memorandum.

18 THE COURT: That is what occurs in this
19 policy.

20 MR. SMITH: Right. The named insured
21 and the resident insured are insured to the same
22 extent. Neither of them are covered for the
23 operation of non-owned motorcycles.

24 THE COURT: Thank you. Mr. Gray.

25 MR. GRAY: Your Honor, I think one of

1 the initial problems that we face is one of the
2 statutes not defining what an owner's or operator's
3 policy is, and also the fact that the policy itself
4 does not define itself as an owner's policy. So
5 we're left with looking at the content of both the
6 policy and of the law to determine what it is.

7 Now, when you look at the policy, it
8 simply doesn't tell you, well, this is an owner's
9 policy. What it does is it insures the owners of
10 certain automobiles and gives them certain rights
11 and benefits and thence goes further to extend
12 coverage for any resident relative. Now, this of
13 course is pursuant to law.

14 Now, as a matter of just simple logic,
15 the fact is that any resident relative who is
16 insured and does not own those cars must be insured
17 as an operator of those cars. They don't own
18 them. They are operators. And there is no dispute
19 that as to the extent of use with a borrowed
20 automobile or the permissive use of a car at the
21 very least, that they are also operators and not
22 owners. So we have a class of people that are
23 insured under this policy as strictly operators and
24 not owners.

25 So then the question becomes: Well,

1 what is required when you extend coverage to
2 someone who is just an operator? And I don't
3 believe that the statute simply says that it has to
4 be one or the other. Obviously, you can be both an
5 operator and an owner and have coverage, and then
6 the issue becomes, well, what is does the law
7 require? Well, certainly you could have an
8 operator's policy strictly and you would come only
9 under one of the subsections and you could have
10 just an owner's policy and come under only one of
11 the subsections.

12 But in this particular case, we have a
13 situation where we have absolutely no dispute that
14 we have an operator who is using a vehicle, and
15 under the statute it is required that they be
16 covered as a motor vehicle and that would include a
17 motorcycle.

18 THE COURT: Don't the contents of the
19 policy you're asking me to examine -- don't the
20 contents of the policy, aren't they controlled by
21 the definitions included in the policy? And if
22 that's the case, hasn't the policy consistently
23 with itself excluded the coverage that you're
24 talking about?

25 MR. GRAY: Yes, I agree that the policy

1 excludes coverage for motorcycles in its language
2 and the issue is, does the law allow that when it
3 comes to an operator? And I believe that under the
4 statute it does not, that you can't limit that. If
5 you're going to go and say -- I mean the argument
6 they're making is that basically we allow coverage
7 for owners, and because we're so nice we're going
8 to give you some additional coverage, but we're
9 going to limit it to just cars, four wheels.

10 And of course, the argument about
11 motorcycles being a different risk, I think that
12 that's correct, but all different cars have
13 different risks. I would assume that perhaps an
14 old Volkswagen without an engine in the front might
15 have a different risk than a new Hummer that is
16 built like a tank. And no one knows what kind of
17 vehicle you're going to be borrowing from somebody,
18 so that risk is not something that can ever be
19 defined from the outset. So in terms of it being a
20 different risk, there's simply no way, when it
21 comes to a borrowed vehicle, that that risk is
22 going to charge an additional premium and say,
23 well, you can only borrow a Hummer, you can't ever
24 borrow a Volkswagen because the policy -- excuse
25 me, the statute says you have to extend it to all

1 motor vehicles.

2 And I think that would be basically our
3 argument, Your Honor.

4 THE COURT: Thank you, I appreciate
5 that.

6 MR. SMITH: Would you like me to reply
7 to that at all, Your Honor?

8 THE COURT: Go ahead.

9 MR. SMITH: I'd just like to point out
10 that the liability section all deals with coverage
11 extended for your car. The only provision that
12 extends liability coverage says this: We will pay
13 damages for which an insured becomes legally liable
14 to pay because of bodily injury to others and
15 damage to or destruction of property, including
16 loss of its use caused by an accident resulting
17 from the ownership, maintenance or use of your
18 car. That's the coverage that is extended.

19 THE COURT: And that "use of your car"
20 defined in the statute under the policy is the 1984
21 Ford Ranger.

22 MR. SMITH: Exactly. I mean it's
23 pretty straightforward, I think.

24 THE COURT: It appears to the Court
25 that based upon the consistent language in the

1 policy, as well as the statutory reference that has
2 been provided to the Court, the Court is of the
3 opinion that Motion for Summary Judgment on behalf
4 of the Plaintiff should be granted; that the policy
5 in question is an owner's policy. While there may
6 be some language concerning operators, if it's an
7 operator's policy that would extend coverage to a
8 situation involved in this matter, particularly for
9 the motorcycle involved in the accident, was not a
10 named vehicle and was not owned by the insureds on
11 the policy. Therefore, Plaintiff's Motion for
12 Summary Judgment is granted in this matter.

13 Mr. Smith, if you'd be so kind as to
14 draft for the Court the order.

15 MR. SMITH: Thank you, Your Honor.

16 THE COURT: Now, this thing started out
17 as a declaratory action, and out of the cross
18 claims and counterclaims of that remain a personal
19 injury action; is that right?

20 MR. SMITH: I think that's what
21 remains, Your Honor.

22 THE COURT: All right. And so
23 Mr. Smith, you'll be out of the case?

24 MR. SMITH: Correct.

25 THE COURT: And remaining then would be

1 Mr. Gill on behalf of Christensen; Mr. Gray will
2 still remain on behalf of Eggleston, regardless of
3 insurance coverage, I assume; defended by Nemelka,
4 and with no insurance coverage. Is that how it
5 is?

6 MR. SMITH: That's how it is, Your
7 Honor. Thank you very much.

8 THE COURT: Okay.

9 (Concluded at 8:45 a.m.)
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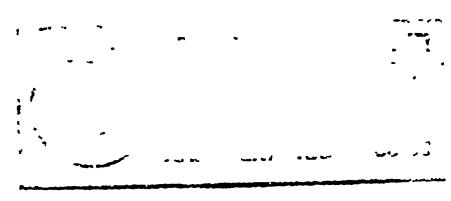
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, DEANNA M. CHANDLER, a Certified
Shorthand Reporter in and for the State of Utah, do
hereby certify:

That said proceedings were taken down
by me in shorthand (from videotape) and reduced to
transcription under my direction.

I further certify that I am not of kin
or otherwise associated with any of the parties to
said cause of action and that I am not interested
in the outcome thereof.


DEANNA M. CHANDLER



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C. J. M.

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | | |
|------------------------------|---|-----------------------|
| STATE FARM MUTUAL AUTOMOBILE |) | |
| INSURANCE COMPANY, |) | ORDER |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| CHAD CHRISTENSEN and |) | Civil No. 960901334CV |
| KATHRINE EGELSTON, |) | |
| |) | Judge Glenn Iwasaki |
| Defendants. |) | |

Motions for Summary Judgement filed by State Farm Mutual Automobile Insurance Company and Kathrine Egelston were presented for oral argument on March 5, 1997. Lowell V. Smith appeared on behalf of State Farm Mutual Automobile Insurance Company. Albert W. Gray appeared on behalf of Kathrine Egelston. L. Zane Gill appeared representing Chad Christensen, but did not participate in the oral argument. Richard S. Nemelka did not appear but called the court to notify the Court and counsel that he would not be appearing at the hearing.

The Court indicated that the memoranda in support of and memoranda in opposition to the Motions for Summary Judgment had been received and reviewed and invited the parties to present oral argument. Lowell V. Smith presented argument in support of the

Motion for Summary Judgment filed by State Farm Mutual Automobile Insurance Company and in opposition to the Motion for Summary Judgment filed by Kathrine Egelston. Albert W. Gray presented argument in opposition to the Motion for Summary Judgment filed by State Farm Mutual Automobile Insurance Company and in support of the Motion for Summary Judgment filed by Kathrine Egelston.

The Court having reviewed the memoranda, having considered the oral arguments, having reviewed appropriate Utah law, and having reviewed the policy of insurance issued by State Farm Mutual Automobile Insurance Company, now enters the following Order:


IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Motion for Summary Judgment filed by State Farm Mutual Automobile Insurance Company, pursuant to Rule 56, Utah Rules of Civil Procedure, is hereby granted;
2. The Motion for Summary Judgment filed by Kathrine Egelston is hereby denied;
3. Judgment is hereby entered in favor of State Farm Mutual Automobile Insurance Company ("State Farm"). The insurance policy issued by State Farm is an "owner's" policy as defined by Utah Code Annotated §31A -22-303 and is not an "operator's" policy. The policy does not extend insurance liability protection coverage to the accident which is the subject of Kathrine Egelston's claims against Chad Christensen. State Farm owes no duty to defend or indemnify Chad Christensen for the claims asserted by Kathrine Egelston.
4. There is no just reason for delay and, pursuant to Rule 54, Utah Rules of Civil Procedure, final judgment may be entered in favor of State Farm Mutual Automobile Insurance Company.

5. State Farm Mutual Automobile Insurance Company is awarded its taxable costs, to be established by an appropriate Memorandum of Costs to be submitted in accordance to Rule 54, Utah Rules of Civil Procedure.

Dated this 23 day of April, 1997.

THIRD DISTRICT COURT



HONORABLE GLEN K. IWASAKI